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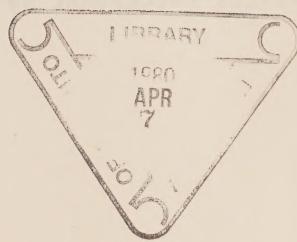
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"LAND TITLES PROCEDURAL GUIDE"

Ministry of Consumer and  
Commercial Relations  
Property Rights Division  
October 1979.

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## F O R E W O R D

The Property Rights Division is pleased to present the new revised edition of the Land Titles Procedural Guide. This edition not only updates and amends our original version issued in June of 1977, but adds a new chapter 18 dealing with "Devolution of Estates" which we trust will simplify and standardize registrations necessary as the result of the death of registered owners.

The "old Guide" may still be used (save and except the application to register a plan document in Chapter 14) until January 1, 1980. However, where this Guide provides additional requirements not covered in the "old Guide" these additional requirements are effective immediately. Of course, registrants need not wait until January 1, 1980 in order to use the forms and provisions of this edition.

We sincerely hope that the additions and changes made to the Guide will further assist the legal profession and land registry staff in dealing with the requirements of The Land Titles Act.

Office of the  
Director of Titles

October, 1979



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## CHAPTER I

### TRANSFERS

A Transfer under The Land Titles Act is equivalent to a Deed; a completed example of the first two pages of the prescribed form is shown on Page 1-7. An instrument that is not in the prescribed form purporting to transfer land is not normally acceptable; the Land Registrar may, however, in his discretion, accept a deed or other instrument that is commonly used to convey land registered under The Registry Act (see section 89 of The Land Titles Act). Only the registered owner is entitled to transfer land registered under The Land Titles Act.

The outstanding Certificate of Ownership, if any, need not be surrendered on the registration of a transfer, unless the Land Registrar considers it expedient to require the production of the Certificate of Ownership as set out in Section 125 of The Land Titles Act. Section 125 of the Act also allows a person who is entitled to have a transfer registered, to require production of an outstanding certificate for cancellation or updating as the case may be. Where a required certificate has been lost or destroyed, the Land Registrar may accept in lieu thereof an affidavit of loss. The form of affidavit which appears on page 8-13 may be appropriately amended.

### NAME, CAPACITY AND TENURE OF TRANSFERORS

The name of each Transferor must be exactly as shown on the Parcel Register. If the name of a Transferor is incorrect on the Parcel Register, or has changed (e.g., where a woman has subsequently married), an application to amend the Register in the form shown on Page 1-8 is required. However, an application to amend the Register is not required if (a) the same evidence that would be filed in support of the application accompanies the Transfer; or (b) in the case of a corporate change of name, the Transfer recites the registration number of the instrument changing the name of the corporation. No additional registration fee is payable where the evidence is included in the Transfer.

The Transfer need not set out the capacity or tenure in which the Transferor(s) hold the land, i.e., as joint tenants, tenants in common, partnership property, executor(s), nor set out the place of residence of the Transferor(s).

The wording indicating the capacity or tenure, if used, should be identical to that contained in the Transfer to the person(s) now transferring.

#### (a) Transfer by Owner or by Owner to Uses.

An owner of land, including an owner under a Transfer to Uses, transfers or exercises his power of appointment as follows:

*I, John Allan Smith, the registered owner of the freehold land registered as Parcel 25 in the Register for Section M-50, in consideration of \$30,000 paid to me transfer to*

.....

- (b) Transfer by Part Owner - See section 68 of The Land Titles Act.

A Transfer by a part owner may, but does not have to, set out the percentage or fractional share being transferred.

1. Where the Register specifies the owner's share, for example:

*"The registered owner of a one third share"*

the Transfer may describe the Transferor as one of the registered owners or the registered owner of a one-third share and the share may be transferred in any of the following ways:

*transfers all his share, or  
transfers his one third share, or*

if only a part of the share is being transferred,

*transfers a one sixth share*

2. Where the share is not specified on the Register, the Transfer will describe the Transferor as

*one of the registered owners*

and will normally state that the Transferor

*transfers all his share*

A Transfer of a specified share by a part owner whose share is not set out on the Register must be accompanied by an affidavit of every co-owner setting out the Transferor's share, unless the Transfer is to all his co-owners.

- (c) Transfer of Leasehold Land.

Refer to the notes regarding Leases. (Chapter II).

- (d) Transfer by a Limited Partnership.

A transfer presented for registration executed by a limited partnership must indicate that the partnership is a limited partnership duly filed under The Limited Partnership Act. For example:

"X Company Limited, general partner and Y Company Limited, limited partner, carrying on business as Z Company, a limited partnership duly filed under The Limited Partnership Act."

- (e) When the property is being transferred by a general or limited partnership, an affidavit re the constitution of the partnership will no longer be required.

NAMES, CAPACITY AND TENURE  
OF TRANSFEREES

The Transferee's name should be set out in full; the use of initials can cause problems when searching for writs of execution.

The types of ownership interests that may be acquired are varied; the most common types are set out below along with appropriate wording for describing those Transferees.

(1) Joint Tenants

(a) Husband and Wife -

.....transfer to John Allan Smith and Mary Ann Smith, both of the City of Windsor in the County of Essex, as joint tenants.

(b) Two or More Transferees -

.....transfer to John Allan Smith, George Ian Brown and William Roy Jones, all of the City of Windsor, in the County of Essex, as joint tenants.

(2) Tenants in Common

(a) Unstated Shares

.....transfer to John Allan Smith and Mary Ann Smith, both of the City of Windsor in the County of Essex.

## (b) Stated Shares

..... transfer a 50% share to John Allan Smith, a 30% share to George Ian Brown and a 20% share to William Roy Jones, all of the City of Windsor in the County of Essex.

(3) Tenancy in Common and Joint Tenancy Combined

..... transfer a 1/2 share to John Allan Smith and Mary Ann Smith, both of the City of Windsor in the County of Essex, as joint tenants and a 1/2 share to George Ian Brown of the Town of Port Elgin, in the County of Bruce.

(4) Life Estate and Remainder

..... transfer a life estate to John Allan Smith and the remainder to George Ian Brown, both of the City of Ottawa in the Regional Municipality of Ottawa-Carleton.

(5) To Uses

..... transfer to George Ian Brown, of the City of Belleville in the County of Hastings, to such uses as the said George Ian Brown appoints by Transfer or Charge or Will.

(6) Partnership

..... transfer to John Allan Smith and George Ian Brown, both of the City of Windsor in the County of Essex, carrying on business in partnership as Hogtown Delivery Services

- or -

..... transfer to John Allan Smith and George Ian Brown, both of the City of Windsor in the County of Essex, as partnership property.

Note: When a limited partnership is the transferee, the names of the general and limited partners, clearly identified as such must be set out together with the name under which the partnership is carried on, including words indicating that it is a limited partnership.

(7) Corporation

..... transfer to Colossal  
Consolidated Enterprises Limited.

ADDITIONAL REQUIREMENTS WHERE THE  
TRANSFeree IS A CORPORATION

Subject to the exceptions noted below,

- (a) a Transfer to a corporation incorporated under an Act of Ontario or Quebec cannot be registered unless the Letters Patent or Articles of Incorporation of that corporation or a notarial copy thereof has been registered.
- (b) a Transfer to any other corporation cannot be registered unless a licence under which the corporation is empowered to hold land in Ontario or a notarial copy thereof is registered. This licence may be an extra-provincial licence under Part IX of The Corporations Act or a mortmain licence under The Mortmain and Charitable Uses Act.

Note: A copy of the letters patent, articles or licence certified by the proper officer of the department or ministry of the Government of Canada or Ontario in whose office the original is officially filed, is also acceptable for registration.

Where the name of a corporation to which these requirements apply has been changed or where such a corporation has been amalgamated or absorbed by another corporation, a notarial copy of the Supplementary Letters Patent or Articles of Amendment effecting the change must be registered before any Transfer by or to the renamed or new corporation can be registered.

Exceptions

Letters Patent, Articles of Incorporation and Licences to hold land in Ontario are not required to be registered in respect of Transfers to the following corporations and classes of corporations:

Group 1 (Exempted by subsections 1 and 6 of section 97 of The Land Titles Act)

- (1) Municipal corporations,
- (2) corporations incorporated by special Acts of Canada or Ontario, provided that the Land Registrar is satisfied of the fact of such incorporation. A transfer to such a corporation must contain a recital giving the official citation of the Act by which the Transferee was incorporated.
- (3) corporations currently licensed or registered under

The Insurance Act, The Investment Contracts Act or The Loan and Trust Corporations Act.

- (4) banks to which the Bank Act (Canada) applies.
- (5) boards, commissions or other bodies, all the members of which are appointed by the Governor General in Council or by the Lieutenant Governor in Council.
- (6) authorities established under The Conservation Authorities Act or any predecessor of that Act.

Group 2 (Exempted by regulations made under subsection 7 of section 97 of The Land Titles Act)

- 1. Central Mortgage and Housing Corporation;
- 2. Federal Business Development Bank;
- 3. Interprovincial Pipe Line Limited;
- 4. North Pickering Development Corporation;
- 5. Ontario Development Corporation;
- 6. Ontario Energy Corporation;
- 7. Ontario Housing Corporation;
- 8. Ontario Land Corporation;
- 9. Ontario Student Housing Corporation;
- 10. The Bell Telephone Company of Canada  
also known as Bell Canada and La Companie  
de Telephone Bell du Canada;
- 11. The Law Society of Upper Canada;
- 12. TransCanada Pipelines Limited;
- 13. Trans-Northern Pipeline Company
- 14. Boards of education, public school boards,  
secondary school boards, Roman Catholic  
Separate school boards and Protestant  
Separate school boards.

A Transfer to a corporation that is empowered to hold land in Ontario only by virtue of a licence need not be supported by an affidavit deposing that the Transfer does not exceed the limit of the licence.

# The Land Titles Act

J.

GEORGE IAN BROWN

the registered owner of the freehold land registered in the  
 Land Registry Office for the Land Titles Division of Toronto & York South (No.66  
 as Parcel 25-1  
 in the register for Section M-50

in consideration of the sum of

-----Seventy-Five Thousand (\$75,000.00)-----Dollars

paid to me TRANSFER to JOHN ALLAN SMITH

of the City of North York in the  
 Municipality of Metropolitan Toronto

the land hereinafter particularly described namely

- \* in the Town of Markham, in the Regional Municipality of York and being all of Lot 25 according to Plan M-50.
- SUBJECT to an easement in favour of Bell Canada over part of said Lot 25 designated as Part I on Reference Plan 66R-1000 for the purposes set out in Transfer 60214.
- TOGETHER with a right of way over that part of Lot 24 according to Plan M-50 designated as Part I on Reference Plan 66R-1065 for the purposes set out in Transfer 34269.

being the whole of said parcel.

Note: \*1. Where the instrument deals with the whole of the parcel, the particular description may be omitted and the following substituted -

"the whole of the said parcel"

2. A transfer executed on the front page is acceptable for registration.

APPLICATION TO AMEND THE REGISTER  
THE LAND TITLES ACT SECTION 82

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, JOSEPH BROWN (formerly JOSIP BRONKOWSKI)  
the registered owner of Parcel 25-1  
in the Register for Section M-50  
hereby apply to have the Register for the said Parcel  
amended by substituting my present name, Joseph Brown, in place  
of my former name, Josip Bronkowski.

The evidence in support of this application consists of a  
Certificate of Court Order attached hereto.

DATED at Toronto this 10th day of January, 1977.

"Joseph Brown  
Applicant

by his Solicitor

John Law"

## CHAPTER 2

### CHARGES

A Charge under The Land Titles Act is equivalent to a mortgage in all important respects save one; it creates only a lien on the land charged and the legal title therefore does not vest in the Chargee. As a result, a Cessation of Charge (equivalent to a Discharge of Mortgage) does not have the effect of reconveying title to the Chargor. A precedent for the charging portion of the prescribed form of Charge appears on Page 2-8. An instrument purporting to charge land that is not in the prescribed form is not normally acceptable; the Land Registrar may, however, in his discretion, permit the registration of a mortgage in the form commonly registered under The Registry Act. (See section 89 of The Land Titles Act). Under The Land Titles Act, only the registered owner is entitled to charge registered land.

### REQUIRED CONTENTS

A Charge to secure money must set out:

- (a) the specific maximum amount of money that it secures (in Canadian or foreign currency);
- (b) the rate of interest and periods of payment. A "rate of interest" need not be a numerical figure. As long as a formula for calculating the interest on a maximum principal amount in a charge is given in the instrument, the charge should be accepted for registration notwithstanding that the formula for calculation is contained in other documents attached to the charge. In cases where no formula is given, the document should be referred to the office of the Director of Titles for approval; and
- (c) a determinable balance date or a statement that the balance is payable on demand.

A Charge that purports to secure future indebtedness of the Chargor to the Chargee may be accepted for registration so long as the Charge states that the amount secured is not to exceed a specified maximum amount.

A Charge may also be given as security for any other purpose if the purpose is set out in the charge.

NAME, CAPACITY AND TENURE  
OF CHARGORS

The name of the Chargor must be exactly the same as shown on the Parcel Register. If the name of the Chargor on the Parcel Register is incorrect, or has changed (where a woman was subsequently married), then the comments set out on Page 1-1 with regard to transfers apply. The application to amend the register, when used, is the same as that required when the name of the Transferor has changed. An example appears on Page 1-8. If an application to amend the register is not used, but the material evidencing the change of name accompanies the charge, no additional fee is payable but the Land Registrar will be required to note the change in name of the owner on the parcel register. The Charge need not set out the capacity or tenure of the Chargor(s), nor set out the place of residence of the Chargor(s). The wording indicating the capacity or tenure, if used, should be identical to that contained in the Transfer to the person(s) now charging.

(a) Charge by Owner or by Owner to Uses -

An owner of land including an Owner under a Transfer to Uses charges the land in the following manner:

*I, John Allan Smith, the registered owner of the freehold land registered as Parcel 100-1 in the Register for Section M-100 in consideration of Thirty Thousand (\$30,000) Dollars paid to me charge the land ..... with the payment to George Ian Brown of ..... .*

(b) Charge by Part Owners -

The comments with respect to Transfers by Part Owner apply equally to Charges. (Page 1-2)

(c) Charges of Leasehold Land -

See the notes regarding leases (Chapter II).

(d) Charge by a Limited Partnership -

The comments with respect to transfers by limited partnerships apply equally to charges. (Page 1-2)

NAME, CAPACITY AND TENURE  
OF CHARGEES

The following descriptions illustrate some of the more common arrangements between Chargees:

(a) Joint Account - Right of Survivorship

..... to John Allan  
Smith and George Ian Brown, both  
of the Town of Bracebridge in the  
District Municipality of Muskoka  
on joint account with right of  
survivorship.

Note: The parties may also be described as "joint tenants" to indicate a right of survivorship. It should be noted, however, that the use of the words "on joint account" alone will not be taken to indicate a right of survivorship although the survivor may execute a cessation on behalf of the deceased chargee.

(b) Tenancy in Common

(i) Unstated Shares

..... to John Allan  
Smith and George Ian Brown.....

(ii) Stated Shares

Percentages

..... to John  
Allan Smith as to an 80% share  
and to George Ian Brown as to  
a 20% share.....

Monetary Amounts

..... to John  
Allan Smith as to a \$20,000  
share and to George Ian Brown  
as to a \$5,000 share.....

(c) Partners

..... to John Allan  
Smith and George Ian Brown,.....  
carrying on business in partnership  
as Longs Diaper Service.

- or -

..... to John Allan  
Smith and George Ian Brown,.....  
as partnership property.

### ADDITIONAL REQUIREMENTS WHERE THE CHARGE IS A CORPORATION

The provisions of The Land Titles Act requiring the registration of the Letters Patent, Articles of Incorporation or licence to hold land in Ontario where the Transferee is a corporation apply equally where the Chargee is a corporation and, as is the case with Transfers, where the corporation's name has changed, the Supplementary Letters Patent or Articles of Amendment must be registered before a Charge to or by a renamed or successor corporation will be accepted. The requirements are fully set out in Chapter 1. It is important to note that the exemptions that apply in respect of Charges are identical to those applicable to Transfers.

### CHARGE TO TRUSTEE(S) OF REGISTERED PENSION FUND

Where a Charge is made or transferred to the trustee or trustees of a registered pension fund or plan within the meaning of section 248(1) of the Income Tax Act (Canada), the Chargee or Transferee may be described in the Charge or Transfer of Charge simply as the trustee or trustees, naming the fund or plan, and the individual names of the trustee or trustees are not required if the Charge or Transfer of Charge is accompanied by an affidavit made by one of the trustees or a solicitor deposing that the plan or fund is so registered.

When a cessation of such a charge is presented for registration, an affidavit made by one of the trustees or a solicitor, stating that the executing trustees are entitled to execute the cessation, will be required.

### GUARANTOR CLAUSE

A Charge may contain a clause whereby a third person executing the instrument guarantees payment to the Chargee; there is no prescribed form for such a clause under The Land Titles Act. Where such a clause is included, the Charge need not be accompanied by an affidavit of subscribing witness or affidavit of age with respect to the guarantor.

### COMBINED CHARGE AND MORTGAGE

An instrument that both charges land in the land titles system and mortgages land in the registry system is acceptable for registration and will be entered as a charge against the land titles land.

### TRANSFER OF CHARGE

The Land Titles Act prohibits the registration of a Charge of a Charge (see section 105(8)); however, a Transfer of a Charge (see Page 2-9) for a completed example of the prescribed

form) containing a provision for retransference achieves substantially the same result.

A Chargee may transfer part of the sum secured by his Charge; the Transfer may provide that the part so transferred will rank prior or subsequent to, or continue to rank equally with the remaining part (see section 105(7)). Both the remaining part and all parts thus transferred must continue however to charge all the land described in the original Charge; a Transfer that purports to secure the sum transferred against only part of the land that the charge affects, (with the effect that the remaining sum would not be secured against that part,) will not be accepted.

It should be noted that the Transfer, when registered, confers upon the Transferee ownership of the Charge with respect to the whole or part transferred. (See section 105(8)). Therefore, a Cessation, or a further Transfer executed only by the transferee will not be refused even where the original Transfer contains a provision for re-transference.

#### POSTPONEMENT OF CHARGE

The Land Titles Act provides that the rights of priority acquired by registration may be postponed to rights acquired or claimed under another registered instrument. (See section 85(6)). Priority in respect of all or a part of the money secured by a Charge may be postponed to the money secured by a Charge registered subsequently by using the prescribed form of postponement, a completed example of which is shown on Page 2-10.

#### CESSATION OF CHARGE

A Cessation of Charge under The Land Titles Act is generally speaking, equivalent to a Discharge of Mortgage under The Registry Act. (See Page 2-11 for a completed example of the prescribed form.) A Cessation in respect of only part of the lands charged is acceptable provided that section 29 of The Planning Act is compiled with.

Where a Mortgage has been registered under The Registry Act and the mortgaged land is subsequently registered under The Land Titles Act, the Mortgage may be discharged by either a Cessation of Charge or a Certificate of Discharge of Mortgage in the form prescribed under The Registry Act. (See section 107(2) of The Land Titles Act.) A Discharge of Mortgage must indicate the parcels on which the discharge is to be entered. A Deed of Trust and Mortgage or a Debenture registered under The Land Titles Act maybe discharged by a Cessation of Charge.

The personal representative of a deceased Chargee may execute a Cessation of the Charge. To be acceptable for registration, the Cessation must be accompanied by a notarial copy of the Letters Probate or Letters of Administration appointing the personal repre-

sentative and where the death occurred after December 31, 1958 and before January 1, 1972, a Consent under the Estate Tax Act (Canada); a Transmission Application is not required. Where two Chargees hold on joint account with a right of survivorship or as joint tenants, a Cessation executed by the surviving chargee will be accepted if accompanied by a death certificate or an affidavit as to the death of the co-holder, plus the required Succession Duty and Estate Tax consents; if the two chargees hold on joint account without a right of survivorship a Succession duty consent is not required; a Survivorship Application in either case is not required. It should be noted, however, that in any of these cases where the additional material would normally constitute the supporting material for a transmission application or survivorship application, the cessation will be treated as a "combined instrument" to calculate the registration fee.

In cases where a Cessation cannot be obtained but proof can be furnished that the charge has been satisfied in full, the Land Registrar can, upon the application of the registered owner, note the cessation of the Charge on the Register. Evidence to this effect could consist of receipts, bank statements, cancelled cheques, etc. The prescribed form of application is given on Page 2-12. If evidence of payment is not available, and there has been no demand for payment by the Chargee for 10 years, a court order may be obtained under Rule 610 of the Rules of Practice under The Judicature Act to remove the Charge from the Register. If there is money outstanding on a Charge, and the Chargor is unable to pay off the Charge because the Chargee cannot be found, the Chargor may apply to the court under section 11(3) of The Mortgages Act for a cessation by paying the amount due on the Charge into court.

An outstanding Certificate of Charge, if any, need not be surrendered when a Cessation or Transfer of Charge is tendered for registration unless the Land Registrar, the chargor or the transferee so requests. If the Certificate has been lost or destroyed, the Land Registrar may accept, in lieu thereof, an Affidavit of Loss. A suggested form for this affidavit is given on Page 8-13. The registered duplicate of the Charge may also be surrendered for cancellation, but this is not a mandatory requirement.

#### DEED OF TRUST AND MORTGAGE

To be registered as a Charge against the lands of the Mortgagor, a Deed of Trust and Mortgage must be accompanied by an authorization in the form shown on Page 2-13 by the parties or their solicitors. The authorization must describe the lands to be charged and set out the aggregate principal sum and interest rate of the bonds or debentures (see section 98(6) of The Land Titles Act). It should be noted that until a Deed of Trust and Mortgage has been discharged, a transfer or further charge of the land cannot be registered without the written consent of the Chargee (see section 98(7) of The Land Titles Act). The Land Registrar will note this restriction on the parcel register. However, the chargee may consent in advance, and the consent may then form part of the authorization accompanying the Deed of Trust and Mortgage (see Page 2-13).

DEBENTURES

A Debenture or similar instrument will not be accepted for registration unless the name of the person entitled to receive the money and to give a discharge is set out in the instrument (see section 98(10) of The Land Titles Act).

AMENDING THE TERMS  
OF A CHARGE

A notice of an Agreement that has the effect of amending the terms or provisions of a Charge may be registered (see Chapter 10)

LODGEMENT OF TITLE DOCUMENTS

An interest created by a lodgement of title documents may be protected by the registration of a notice. In this regard, see Page 9-2.

MERGER OF CHARGE IN FREEHOLD ESTATE

Where a chargee receives and registers a transfer of the land covered by his charge, the charge will not merge in the fee unless he or his solicitor requests the Land Registrar to merge the charge in the fee either by an endorsement on the transfer or by a subsequent application (see Page 2-14). An additional fee is payable in respect of the merger endorsement on the transfer.

# The Land Titles Act

I,

GEORGE IAN BROWN

(hereinafter called the Mortgagor ),

the registered owner of the land entered in the Land Registry Office for the Land Titles Division  
of Toronto and York South (No. 66)

as Parcel 25-1 in the Register for Section M-50

In consideration of the sum of -----Forty Thousand (\$40,000.00)---  
----- Dollars

paid to me, charge the land hereinafter particularly described, namely,

\* in the Town of Markham, in the Regional Municipality of York and  
being all of Lot 25 according to Plan M-50

being the whole of the said parcel with the payment to

JOHN ALLAN SMITH

of the Borough of North York in the Municipality of Metropolitan Toronto  
(hereinafter called the Mortgagee ) of the principal sum of Forty Thousand  
(\$40,000.00) -----Dollars, with interest at the rate  
of 9½ per centum per annum, payable as hereinafter provided, and  
with the powers of sale hereinafter expressed.

NOTE: \*1. Where the instrument deals with the whole of the parcel,  
the particular description may be omitted and the following  
substituted -

"the whole of the said parcel".

2. A charge executed on the front page is acceptable for  
registration.

Transfer of Charge or Mortgage.

# Land Titles Act

I, JOHN ALLAN SMITH

the registered owner under The Land Titles Act of the charge dated

the first day of April 19 73  
 made by GEORGE IAN BROWN

and registered as Number 100001 , charging the land registered as Parcel

25-1 in the Register for Section M-50 in the Land Registry office for the Land Titles Division of Toronto & York South (No.66)  
 In consideration of Twenty Thousand (\$20,000) - -----  
 ----- dollars  
 a \$25,000 share in  
 paid to me, transfer/such Charge to HARVEY ALEX JONES

of the City of Belleville  
 in the County of Hastings  
 as owner.

HARVEY ALEX JONES HEREBY AGREES, that he will, upon payment to him of the sum of \$20,000.00 on the 15th day of January, 1974, with interest thereon at 9% per annum from the 1st day of November, 1973, RE-TRANSFER the share hereinbefore transferred

Dated the fifteenth day of October 19 73.

WITNESS

"I. M. WISE"

"JOHN ALLAN SMITH"

"HARVEY ALEX JONES"

NOTE: This form appropriately amended may be used where the whole of the charge is being transferred.

POSTPONEMENT OF CHARGETHE LAND TITLES ACT SECTION 85(6)

TO: THE LAND REGISTRAR FOR THE LAND TITLES DIVISION OF  
TORONTO AND YORK SOUTH (NO. 66)

I, JOHN ALLAN SMITH, the registered owner of Charge No. 100001  
on the land entered as Parcel 25-1 in the Register for Section M-50  
made by George Ian Brown, to me, hereby postpone the Charge to  
Charge No. 100100 made to SUSAN ANN JACKSON.

DATED at Toronto this 20th day of October, 1977

"JOHN ALLAN SMITH"

WITNESS:

"I. M. WISE"

NOTE: An affidavit of subscribing witness and an affidavit of  
legal age are required.

This form may be used with appropriate amendments where  
part of the sum secured by the charge is being postponed.

## The Land Titles Act

### Authority by Owner of Charge to Notify Cessation of Charge

To the Land Registrar:

L. JOHN ALLAN SMITH

EG. P. 22. 261  
22. 262  
22. 263  
22. 264  
22. 265

the registered owner of the Charge made by

GEORGE IAN BROWN -----

----- to (1) me

1. If the Charge  
has not been trans-  
ferred insert "me".  
If it has been trans-  
ferred insert the  
name of original  
Mortgagor and add  
"and transferred to  
me."

dated the first day of April , 19 73 , and  
registered as No. 100001 on the Land registered in the Land Registry  
Office for the Land Titles Division of Toronto and York South (No. 66)

as Parcel 25-1 in the Register for Section M-50 hereby  
hereby.

2. When only part  
of the land covered  
by the Charge is to  
be released, insert  
here, "as to the  
following land,"  
and add a descrip-  
tion of the land to  
be released.

Register for Section M-50 hereby  
authorize the Land Registrar to notify on the Register the CESSATION of the said  
Charge (2).

Dated this 1st day of June 1977

**Witness**

"I. M. WISE"

"JOHN ALIAN SMITH"

APPLICATION TO NOTE CESSATION OF CHARGETHE LAND TITLES ACT SECTION 106(1)

TO: THE LAND REGISTRAR FOR THE LAND TITLES DIVISION OF  
TORONTO AND YORK SOUTH (NO. 66)

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JOHN ALLAN SMITH, the registered owner of the land entered as Parcel 25-1 in the Register for Section M-50 requests you to notify on the Register the Cessation of the Charge made by the said JOHN ALLAN SMITH, dated the tenth day of October, 1973 and numbered 24680 and now appearing as an encumbrance upon the land, the charge having been paid off and satisfied.

The evidence in support of this application consists of -

- 1) The affidavit of John Allan Smith;
- 2) Bank statements and cancelled cheques of  
John Allan Smith

DATED at Toronto the 20th day of October, 1998.

"John Allan Smith

by his Solicitor:

Timothy Q. Law"

AUTHORIZATION TO REGISTER DEED OF TRUST AND MORTGAGE  
AS CHARGE

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THE LAND TITLES ACT SECTION 98(5)

WE, the undersigned, hereby authorize you to register the within Deed of Trust and Mortgage, dated the 7th day of August 1977 and given by CLASSY BUILDERS COMPANY LIMITED, the registered owner of the land entered as Parcel 25-1 in the Register Section M-50, to RELIABLE TRUST COMPANY to secure an issue of bonds not to exceed in the aggregate the sum of \$500,000.00 principal amount and interest at the rate of 9½% per annum, as a charge against the following lands:

Lot 25 according to Plan M-50, registered  
in the Land Registry Office for the Land  
Titles Division of Toronto and York South  
(No. 66).

\*The Chargee hereby consents to any transfer or further charge of the above described lands.

DATED at Toronto this 10th day of August, 1977

CLASSY BUILDERS COMPANY LIMITED  
by its Solicitor:

"TIMOTHY Q. LAW"

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RELIABLE TRUST COMPANY

"THOMAS M. BRIDGE"

C/S

President

\*NOTE: Where such a consent is included, a solicitor cannot sign for the chargee.

APPLICATION TO MERGE CHARGE IN FEETHE LAND TITLES ACT SECTION 82

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO AND YORK SOUTH (NO. 66)

John Allan Smith, the registered owner of the land entered as Parcel 25-1 in the Register for Section M-50 authorizes you to delete the entry of Charge No. 42641 from the said Register by reason of the merging of the said Charge in the fee by Transfer No. 44627.

DATED at Toronto this 21st day of August, 1977.

"John Allan Smith

by his Solicitor

R. T. Smith"

CHAPTER 3SALE BY A CHARGEES

A Chargee is entitled to exercise the same remedies on default as those available to a Mortgagee under a Mortgage. He may therefore sell the land either in accordance with the terms of a power of sale contained in a Charge (subject to Part III of The Mortgages Act) or under the provisions of Part II of The Mortgages Act.

A Transfer by a Chargee exercising a power of sale must be supported by evidence to satisfy the Land Registrar that the sale has been properly carried out; the material required is collectively termed "Sale Papers". The precedents for this material (Pages 3-6 to 3-10) are adaptable for use either where the sale is carried out in accordance with a power of sale contained in the Charge or under Part II of The Mortgages Act.

If the Land Registrar is satisfied with the sale papers and transfer, a purchaser will be registered as owner and his title will not be made subject to any encumbrance registered after the registration of the Charge under which the sale is being carried out, subject to the following exceptions:

1. A Notice of a Conditional Sales Contract, or a Notice of a Security Interest registered pursuant to The Personal Property Security Act and registered subsequent to the Charge will not be deleted from the parcel register unless:

(a) in the case of a Notice of Conditional Sales Contract an affidavit of the chargee is obtained stating to the best of his knowledge and belief that an advance was made under the charge between the time the goods were affixed to the property and the time notice of the contract was registered.

(b) in the case of a Notice of Security Interest an affidavit of the chargee is obtained stating:

(1) that to the best of his knowledge and belief, the security interest attached to the goods after they became fixtures; and

(11) that the chargee did not consent in writing to the security interest nor disclaim an interest in the goods as fixtures;

- or -

(1) that to the best of his knowledge and belief the security interest attached to the goods before they became fixtures; and

(11) that to the best of his knowledge and belief a subsequent advance as set out in section 36(3)(c) of The Personal Property Security Act was made or contracted for under the charge without actual notice of the security interest.

2. A claim for lien under The Mechanics' Lien Act registered subsequent to the Charge will not be deleted from the parcel register if:

- (a) The chargee was added in the lien claimant's claim for lien and no Certificate of Action has been registered by that lien claimant; or
- (b) The chargee was added in the lien claimant's claim for lien and the lien claimant's Certificate of Action also adds the chargee as a party defendant; or
- (c) The chargee was not added in the claim for lien but the chargee has been added as a party defendant in the lien claimant's Certificate of Action or in a Certificate of Action under which the lien claimant is or may be sheltering.

It should be noted, however, notwithstanding that the chargee has been added as a party defendant, the claim for lien may still be deleted from the parcel register if the Land Registrar is satisfied upon production of the statement of claim that the lien claimant is claiming priority:

- (1) only as to some but not all advances made under the charge; or
- (2) only with respect to the increased value of the land since the time the lien first arose.

In these cases (i.e. (1) and (2) above), only the claim of the lien claimant who registered the Certificate of Action is to be deleted. Every other claim for lien that is sheltering under the Certificate of Action will remain on the parcel register until concrete evidence can be shown to indicate that the claim of priority of the other lien claimants falls within (1) or (2) above.

In the case of Brousseau et al v. Muircrest Investments Ltd. et al 1977 15 O.R. (2d) 145, the Ontario Court of Appeal defined the extent of the concept of "sheltering". In short, the court held that a claim for lien may shelter under another person's Certificate of Action provided that the Certificate of Action was registered between the time the claim for lien was "in existence" or "arose" and the expiry date provided in Section 23 of The Mechanics' Lien Act (i.e. 90 days after the work was completed, etc.). Section 7(3) of The Mechanics' Lien Act provides that "the time at which the first lien arose shall be deemed to be time the first work was done or the first material placed or furnished."

Since Land Registrars are unable to determine from the claim for lien or Certificate of Action when the lien first arose, and since Land Registrars no longer police the time limitations on the registration of claims for lien and Certificates of Action, they will be unable to determine whether a claim for lien is properly "sheltering" under any Certificate of Action. Accordingly, Land Registrars under the land titles system have been advised, when dealing with sale papers or foreclosures in which there are registered mechanics' liens, that they are to consider that a claim for lien may properly be "sheltering" under a registered Certificate of Action unless they are satisfied by affidavit evidence that the Certificate of Action was registered prior to the existence of the lien.

It should be noted that a claim for lien which has been sheltering under a Certificate of Action continues to shelter under that Certificate of Action, notwithstanding that the pending action has been settled and the Certificate of Action has been deleted from the parcel register. Accordingly, Land Registrars when considering the "sheltering" principle will consider Certificates of Action which have been deleted from the parcel register subsequent to the registration of the claim for lien in question.

3. A notice of lien for arrears of condominium expenses registered on or after January 1, 1978, against a residential condominium unit will not be deleted from the parcel register unless the Land Registrar is satisfied by affidavit evidence that the condominium unit is not a unit for residential purposes within the meaning of section 33(1) of The Condominium Act

#### DOWER AND THE FAMILY LAW REFORM ACT, 1978

If a Charge has been marked "subject to dower", the Land Registrar will continue to show the title of a purchaser under a power of sale "subject to dower" unless:

- (a) the Land Registrar is satisfied that subsequent to the Charge, the chargor was divorced or that the chargor's wife died; or
- (b) the Land Registrar is satisfied the chargor was alive as of March 31, 1978.

If a Charge had been marked "subject to spousal rights", then a purchaser under a power of sale will take subject to these rights unless the Land Registrar is satisfied that the spousal rights notation is not applicable. (see Page 7-5).

Where the chargee is other than a corporation, executor, administrator, trustee in bankruptcy, public trustee, committee of a mentally incompetent person, Official Guardian, Sheriff, trustee of a religious institution or trustee of a school board, the Land Registrar will concern himself with the matrimonial home provisions

of Part III of The Family Law Reform Act, 1978, with respect to the chargee because of the fact that the chargee may have gone into possession and has used the charged premises as his or her matrimonial home. Accordingly, an affidavit of spousal status is required from many chargees when exercising a power of sale.

Where the Notice of Sale under Charge is sent on or after March 31st, 1978, notice of the sale must be given to the spouse of each chargor as required by Section 43 of The Family Law Reform Act, 1978, unless the Land Registrar is satisfied that notice is not required. In this regard, an unequivocal statement in the Statutory Declaration of the chargee

- (a) that the chargor was not a spouse within the meaning of Section 1(f) of The Family Law Reform Act, 1978, at the time notice was served; or
- (b) that the chargor and his/her spouse never occupied the property as their matrimonial home; or
- (c) that the chargors were spouses of one another at the time the notices were served

will be sufficient proof to the Land Registrar that a notice or an additional notice to the spouse of the chargor is not required.

Although statements (a), (b), and (c) above will avoid sending the spouse of the chargor notice of sale under The Family Law Reform Act, 1978, statements (a) or (b) do not relieve the chargee from serving notice on the widow of the chargor where she would be entitled to redeem because of her barring her dower in the charge and her husband dying before March 31, 1978. Thus notice served on or after March 31, 1978, must be served on the widow of a chargor who has barred her dower in a pre-March 31, 1978, charge unless the Land Registrar is satisfied by an unequivocal statement in the declaration of the chargee that the chargor (husband) was alive on March 31, 1978.

Where the notice of sale under charge was sent prior to March 31, 1978, the wife of the chargor is entitled to be served with such notice if she signed the charge to bar her dower unless the Land Registrar is satisfied dower was not applicable at the time notice was served.

Notice required to be given under Section 43 of The Family Law Reform Act, 1978, may be dispensed with by court order under Section 44(c) of the said Act.

Where notice of a power of sale is required to be given to the spouse of the chargor pursuant to Section 43 of The Family Law Reform Act, 1978, it is sufficient for land titles purposes that such notice be served:

- (a) in the case of a male chargor ("John Doe") upon, "the spouse of John Doe", "the wife of John Doe" or "Mrs. John Doe"; and
- (b) in the case of a female chargor ("Jane Doe") upon, "the spouse of Jane Doe" or "the husband of Jane Doe".

A notice of sale under charge may be signed by the chargee personally or by the agent of the chargee on his behalf. Where the agent is signing on behalf of the chargee, the agent must indicate in the notice the capacity in which he is signing (e.g., XY as agent for AB, chargee).

Section 39 of The Mortgages Act provides that Part III of that Act does not apply to "a mortgage given by a corporation to secure bonds or debentures". In light of this Section, the requirements of Part III on exercise of a power of sale as set out in the Act are not applicable to deeds of trust and mortgage, nor to debentures. In these cases, it depends upon the terms of the power of sale in the document under which the power is carried out whether notice of exercising the power need be given, or by whom or to whom and when and in what manner notice need be given.

SALE PAPERS

## THE LAND TITLES ACT SECTION 103

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

The following material is presented herewith as evidence of the regularity of a sale of land known as Parcel 25-1 in the Register for Section M-50 by GEORGE IAN BROWN, Chargee, in accordance with The Mortgages Act, and under the express power of sale contained in Charge No. 320460 registered against the said parcel:

- 1) Statutory Declaration of George Ian Brown,  
Chargee;
- 2) Statutory Declaration of John Law,  
Solicitor for the Chargee;
- 3) Statutory Declaration as to service of  
Notice of Sale under Charge;
- 4) Affidavit of spousal status of Chargee (if  
applicable).

DATED at Toronto this 18th day of October, 1976.

"G.I. BROWN"

by his Solicitor

"JOHN LAW"

NOTE: This form may be used where the sale is made under the provisions of The Mortgages Act only, by deleting the reference to the express power of sale.

STATUTORY DECLARATION OF CHARGEE

IN THE MATTER of Lot 25 according to Plan M-50, and in the matter of a sale thereof under the power of sale contained in Charge No. 320460, made by JOSEPH P. SMITH, JOANNE SMITH, his wife joining to bar her dower to GEORGE IAN BROWN, dated the nineteenth day of December, 1958, registered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) on the third day of October, 1959.

I, GEORGE IAN BROWN, DO SOLEMNLY DECLARE THAT:

1. I am the registered owner of Charge No. 320460.
- \*2. To the best of my knowledge and belief, money or moneys worth was actually advanced or supplied under the said charge without my having actual notice of any encumbrance registered or filed subsequent to the charge.
3. Default entitling me to sell the land was made in respect of payment of Charge No. 320460 on April 28, 1974, and the said Charge remained in default at the time a sale under the Charge was made.

AND I make this solemn Declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the City )  
of Toronto in the Municipality )  
of Metropolitan Toronto, this ) "GEORGE IAN BROWN"  
20th date of June, 1974. )

"A. Wise"  
A Commissioner, etc.

NOTES:

- \*1. If a chargee under a power of sale had actual notice of a subsequently registered charge when money or moneys worth was advanced or supplied, but is claiming that he still has priority over that charge he must add an additional paragraph 2a as follows while qualifying paragraph 2.

"Money or moneys worth was actually advanced or supplied under the said charge before money or moneys worth was advanced or supplied under charge no. 320761."

If paragraph 2a is made with respect to every subsequent charge and there are no other subsequently registered or filed encumbrances then paragraph 2 is not required.

- \*2. If this statutory declaration is being completed by the assignee of a charge, this paragraph must refer to the actual notice of the person who made the advance.

3. Where the chargee is a corporation, any officer of the corporation who has knowledge of the facts can swear this affidavit.
4. If the charge is marked "subject to dower" a purchaser will take subject to those rights unless additional affidavit evidence is produced to satisfy the Land Registrar dower is not applicable (see Page 3-3).
5. If the charge is marked "subject to spousal rights", a purchaser will take subject to those rights unless evidence is produced to show the notation is not applicable (see Page 7-5).
6. If notice of sale under Charge was sent on or after March 31, 1978, notice of the sale must be given to the spouse of each individual chargor under the provisions of The Family Law Reform Act, 1978, unless a statement on Page 3-4 is added to this affidavit. Also, a statement may be required to satisfy the Land Registrar that service of the Notice of Sale under Charge is not required on the widow of the Chargor. See the second full paragraph on Page 3-4.

DECLARATION OF SOLICITOR

IN THE MATTER of Lot 25 according to Plan M-50, and in the matter of a sale thereof under the power of sale contained in Charge No. 320460 made by JOSEPH P. SMITH, JOANNE SMITH, his wife joining to bar her dower to GEORGE IAN BROWN, dated the nineteenth day of December, 1958, registered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) on the third day of October, 1959.

I, JOHN LAW, DO SOLEMNLY DECLARE THAT:

1. I am Solicitor for GEORGE IAN BROWN, the registered owner of Charge No. 320460 and as such have personal knowledge of the facts herein deposed to;
2. I have made or caused to be made a through search in the Land Registry Office of the Land Titled Division of Toronto and York South (No. 66) and found no persons entitled to notice of exercising the power of sale other than the following who were served with notice:

1. JOSEPH P. SMITH - Chargor
2. JOANNE SMITH - his wife;

- \* 3. In my opinion, the sale proceedings carried out by GEORGE IAN BROWN, in exercise of the power of sale contained in the said Charge No. 320460 are in compliance with The Mortgages Act and other relevant requirements of law.

AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the )  
City of Toronto in the )  
Municipality of Metropolitan ) "JOHN LAW"  
Toronto, )  
this 20th day of June, 1974. )

"A. WISE"

A Commissioner, etc.

\* NOTE: The wording of this paragraph should be suitably amended where the sale is made pursuant to Part II of the Mortgages Act.

**STATUTORY DECLARATION OF SERVICE OF NOTICE  
OF SALE UNDER CHARGE**

IN THE MATTER of Lot 25 according to Plan M-50, and in the matter of a sale thereof under the power of sale contained in Charge No. 320460, made by JOSEPH P. SMITH, JOANNE SMITH, and wife joining to bar her dower to GEORGE IAN BROWN, dated the nineteenth day of December, 1958, registered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) on the third day of October, 1959.

I, NORA JOAN JONES, DO SOLEMNLY DECLARE THAT:

1. I did, on the sixteenth day of June, 1974, serve JOSEPH P. SMITH named in the Notice of Sale under Charge hereto annexed and marked as Exhibit "A" to this my declaration with a true copy of said notice by sending the same to the said JOSEPH P. SMITH by registered mail in accordance with section 32 of The Mortgages Act.
2. The Certificate of Post Office Registration in support thereof is hereto attached and marked as Exhibit "B".
3. I did on the sixteenth day of June, 1974, personally serve JOANNE SMITH, wife of the chargor, with a true copy of the notice hereto annexed and marked as Exhibit "C" to this my declaration in accordance with section 32 of The Mortgages Act by delivering to and leaving the same with the said JOANNE SMITH.

AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED before me )  
at the City of Toronto )  
in the Municipality of ) "N. JOAN JONES"  
Metropolitan Toronto, )  
this 20th day of June, 1974. )

"A. WISE"  
A Commissioner, etc.

NOTE: The form of Notice required to be served is Form 1 to The Mortgages Act.

The following form of wording should be used for the first page of a Transfer by a Chargee exercising a power of sale under his Charge; the Transfer does not form part of the Sale Papers but is registered as a separate instrument. If the sale was made pursuant to Part 11 of The Mortgages Act, the wording should be suitably amended.

THE LAND TITLES ACT

TRANSFER OF FREEHOLD LAND

I, GEORGE IAN BROWN, the registered owner of Charge No. 320460 on the freehold land registered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) as Parcel 25-1 in the Register for Section M-50, in pursuance of the power of sale contained in the said Charge and in accordance with Part 111 of The Mortgages Act, and in consideration of the sum of Thirty Thousand Dollars (\$30,000.00) paid to me, transfer to ALEXANDER SAMSON of the Borough of Etobicoke in the Municipality of Metropolitan Toronto, the land hereinafter particularly described namely:

In the City of Toronto, in the  
Municipality of Metropolitan Toronto  
and being Lot 25 according to Plan M-50.

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## CHAPTER 4

### FORECLOSURE

Foreclosure proceedings under a Charge are substantially identical to those under a Mortgage. Before the Chargee can deal with the land, an Application must be made to register him as owner, supported by his affidavit, precedents for both are illustrated on Pages 4-3 to 4-5.

When a Chargee is registered as owner, his title will be made subject to all prior encumbrances, unless an encumbrance having apparent priority is specifically debarred in the Foreclosure Order. Thus, if a charge is marked "subject to dower" (i.e., the dower rights of the wife of the chargor), then these dower rights will continue unless the chargor's wife is specifically debarred in the foreclosure order, or:

- (a) the Land Registrar is satisfied that subsequent to the Charge, the chargor was divorced or that the chargor's wife died; or
- (b) the Land Registrar is satisfied that the chargor was alive as of March 31st, 1978.

If the Charge has been marked "subject to spousal rights" the title of the chargee as owner will be shown subject to such rights unless the spouse is specifically debarred in the foreclosure order, or the Land Registrar is satisfied that the spousal rights notation is not applicable (see Page 7-5).

If a subsequent encumbrancer being a proper and necessary party to the action, is not specifically debarred in the Order, the title will be made subject to the interest of that encumbrancer. The spouse of the chargor, unless a prior encumbrancer, is a proper and necessary party and must be specifically debarred unless the Land Registrar is satisfied by unequivocal affidavit evidence that (a) the spouse is not a proper and necessary party (e.g., the chargor was not a spouse when the writ was issued); or (b) the chargee did not have sufficient particulars of a spouse of the chargor for the purpose of the foreclosure proceedings and therefore served notice in accordance with section 43 of The Family Law Reform Act, 1978 and the notice was not responded to. A wife who barred her dower in a charge is also a proper and necessary party if her husband (chargor) died before March 31, 1978. In this case, the Land Registrar will require proof whether the husband (chargor) was dead or alive as of March 31, 1978. If the husband was dead, then the widow is a proper and necessary party unless the Land Registrar is satisfied by unequivocal affidavit evidence

that the widow is not a proper and necessary party. If alive, the wife would still be a proper and necessary party, as a spouse under The Family Law Reform Act, 1978.

Encumbrances registered after the commencement of the action but before the Order is registered will not be deleted from the Register unless specifically debarred or unless the affidavit in support of the application contains the following statement:

"To the best of my knowledge and belief, money or moneys worth was actually advanced or supplied under the said charge without my having actual notice of any encumbrance registered subsequent to the issuance of the writ of foreclosure".

Note: If the above paragraph is made by the assignee of a charge, the paragraph must refer to the "actual notice" of the person who made the advance.

Notwithstanding the above statement, (a) if the subsequently registered encumbrance is a claim for lien registered pursuant to The Mechanics' Lien Act, a notice of a conditional sales contract, a notice of a security interest registered pursuant to The Personal Property Security Act or a notice of lien for arrears of common expenses registered on or after January 1st, 1978, pursuant to The Condominium Act, the encumbrance will not be deleted from the Register unless the criteria set out on pages 3-1, 3-2 and 3-3 in chapter 3 have been satisfied; (b) if a subsequently registered encumbrancer is made a party to the foreclosure proceedings in the style of cause, but is not specifically debarred in the final order of foreclosure, he will not be deleted from the parcel register.

APPLICATION TO BE REGISTERED AS  
OWNER OF LAND AFTER FORECLOSURE

*The Land Titles Act Section 102*

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, JOHN ALLAN SMITH, the registered owner of Charge No. 1000001, dated the 5th day of February, 1973, registered the 9th day of February, 1973, charging the land entered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) as Parcel 25-1 in the Register for Section M-50, under and by virtue of a Final Order of Foreclosure dated the 1st day of November, 1974, a Certificate whereof issued by the Court is attached hereto, hereby apply to be registered as owner of the land affected by the said Charge, as described in the said Certificate.

The address of the applicant is:

100 Obscurity Avenue, Toronto.

DATED at Toronto this 10th day of July, 1977.

"JOHN ALLAN SMITH"

by his Solicitor

"TIMOTHY Q. LAW"

Note: This form, appropriate amended, may be used where the foreclosure is by virtue of a judgment.

IN THE MATTER of title to the land entered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) as Parcel 25-1 in the Register for Section M-50 by Foreclosure under Charge No. 100001.

I, JOHN ALLAN SMITH, make oath and say:

1. That I am the registered owner of the above-mentioned Charge No. 100001;
2. That the writ of foreclosure in this matter was issued on the first day of November, 1974;
- \* 3. That I verily believe that the attached Certificate of Final Order of Foreclosure is still in full force and effect and has not been stayed.

SWORN before me at the City of        )  
  )  
Toronto in the Municipality of     )  
  )  
Metropolitan Toronto, this 10th     )     "JOHN ALLAN SMITH"  
  )  
day of July, 1976.                    )

"I.M. WISE"

A Commissioner, etc.

NOTE:

1. Where a corporation is the foreclosing chargee, any officer of the corporation who has knowledge of the facts can swear this affidavit.
2. Where encumbrances have been registered after the commencement of the action but before the order is registered, these encumbrances will not be deleted from the parcel register unless specifically debarred or unless the statement on page 4-2 is added to this affidavit. The statement on page 4-2 will not affect, however, certain subsequently registered encumbrances (see last paragraph on 4-2).
3. If the charge is marked "subject to dower", the new owner will take subject to those rights unless evidence is produced to show notation is not applicable (see page 4-1).
4. If the charge is marked "subject to spousal rights" the new owner will take subject to those rights unless evidence is produced to show notation is not applicable (see page 7-5).

(See next page)

5. An additional statement may be required to satisfy the Land Registrar that the widow or spouse of the chargor is not a proper and necessary party to the foreclosure proceedings (see page 4-1, paragraph 4).
6. Where the application is based upon a Judgment, paragraph 3 should read:

*"That I verily believe that the attached Judgment is still in full force and effect and has not been stayed".*

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## CHAPTER 5

### EXECUTION OF INSTRUMENTS

#### INDIVIDUALS

The signature of a party, other than a corporation, to a land titles instrument must be witnessed. An instrument will be accepted for registration if the signature of a party is illegible or if it is written in foreign characters that bear no relation to the name as it appears in the instrument, or if the party signs by making his mark, provided that it is properly witnessed and the affidavit of execution is properly completed. A signing party may use initials in his signature in place of full given names even though his name is set out in full in the instrument. Personal seals are not required in respect of a Transfer or Charge of or bar of dower in registered land (see section 86 of The Land Titles Act).

#### CORPORATIONS

The corporate seal, in most cases, must appear on an instrument executed by a corporation. Occasionally, an instrument executed by a foreign corporation lacks a corporate seal. The Land Registrar may accept such an instrument if it has attached to it affidavit evidence that a seal is not required in the jurisdiction where the foreign corporation was incorporated. In lieu of the corporate seal, an affidavit of execution with respect to the signing officers will be required.

The seal of the corporation must be legible, and in most cases it will include the corporate name identically as it appears on the instrument. If it is not identical, the Land Registrar will generally require proof (e.g., the by-law adopting the corporate seal) that the seal used is in fact the seal of the corporation. The Land Registrar will not require such proof where the only difference between the corporate seal and the name as it appears on the register relates to an abbreviated or expanded form of the last word of the corporate name. For instance, the seal may use "Ltd." for "Limited" and "Inc." for "Incorporated" or vice-versa.

The individual capacity of each officer who signs on behalf of the corporation must be set out so as to relate to his signature, e.g. "Jack Jones - President", unless the instrument contains a recital that the instrument has been executed by the authorized signing officer(s). If such a recital is not included, the instrument will be refused if the signature does not purport to be that of a named officer; the signature of a person who indicates, for example, that he is signing "for the President" is not acceptable.

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## CHAPTER 6

### POWER OF ATTORNEY

Before an instrument executed under a Power of Attorney will be accepted for registration, the original Power of Attorney or a copy certified by the Land Registrar in whose office the original Power is registered, must be registered. A copy of a corporate Power of Attorney, certified by an officer of the Federal or Ontario Government in whose office the original is officially deposited, is also acceptable. (See O. Reg. 553, section 45).

The instrument should incorporate a recital indicating the registration number of the Power of Attorney along the lines of the following example:

*This instrument is executed by John Allan Smith by his Attorney George Ian Brown under the authority of a Power of Attorney registered as Number 10075 in the Land Registry Office for the Land Titles Division of Toronto & York South (No. 66)*

It should be noted that any form of execution that includes the attorney's signature is acceptable, so long as it is clear that the Attorney is signing for his principal.

Where an attorney executes an instrument on behalf of a corporation or an individual, the attorney's signature must be witnessed and an affidavit of a subscribing witness is required.

Under section 77(3) of The Land Titles Act, a Power of Attorney that has been registered is normally deemed to continue in effect, and the attorney may continue to deal with the principal's land or an interest therein in accordance with its terms, until a Revocation of the Power is registered. A precedent for the Revocation is given on Page 6-3 . The Land Registrar may note that the power is no longer in force on the basis of evidence other than a Revocation; for example, where an application is supported by proof that the power is revoked on death and that the grantor has died.

Powers of Attorney normally identify the Attorney by name. Banks, however, generally authorize the holders of named offices (for example, branch managers) to conduct business and enter into binding arrangements on their behalf; because of rapid staff turnover in these positions, it would be impractical to execute and register Powers of Attorney identifying the Attorney by name every time the incumbent changes.

In view of the foregoing, a Power of Attorney given by a bank that designates the office or position in the bank organization whose holder is empowered to act as Attorney but does not name the incumbent may be registered. Where a Power in this form has been

registered however, an Affidavit of Subscribing Witness with respect to an instrument executed under the Power must be made by a bank employee deposing that the persons executing the instrument held offices or positions designated in the Power at the time of execution. An example of the form of affidavit incorporating the required additional wording appears on Page 6-4.

REVOCATION OF A POWER OF ATTORNEY

THE LAND TITLES ACT SECTION 77(3)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO.66)

I, NORMA JOAN BROWN, hereby revoke, effective March 1, 1977,  
the Power of Attorney given by me to GEORGE IAN BROWN  
registered in the Land Registry Office for the Land Titles  
Division of Toronto & York South (No. 66) on the 10th day of  
June, 1971, as No. 54321.

DATED at Toronto this 12th day of February, 1977.

"NORMA JOAN BROWN"

WITNESS:

"I. M. WISE"

(An affidavit of subscribing witness is required).

AFFIDAVIT OF SUBSCRIBING WITNESS

I, SHELDON GOLD, of the City of Toronto in the  
Municipality of Metropolitan Toronto, make oath and say:

I am a subscribing witness to the attached instrument  
and I was present and saw it executed at Toronto by  
William Reynolds.

I verily believe that the person whose signature I  
witnessed was authorized to execute the instrument as  
attorney for the Bank of Montreal.

I know the said person and he is, and at the time of  
the execution of the instrument he was, bank manager of  
the Bank of Montreal, 300 University Avenue Branch.

I am an employee of the Bank of Montreal, 300 University  
Avenue Branch and as such, have personal knowledge of the  
matters deposed to herein.

SWORN before me )  
at the City of Toronto )  
this 6th day of January, 1977. ) Sheldon Gold

Erica Thompson  
A Commissioner, etc.

## CHAPTER 7

### DOWER AND THE FAMILY LAW REFORM ACT, 1978

The common law right of a widow to dower was abolished by the introduction of The Family Law Reform Act, 1978, on March 31, 1978. The said Act, however, did not affect dower rights which vested prior to March 31, 1978. Accordingly, the following paragraphs on dower have limited relevance.

#### (1) DOWER

##### BAR OF DOWER

A Transfer or Charge by a man where his wife joins in executing the instrument for the purpose of barring her dower should incorporate the following recital above the signature of the parties:

*"And I, NORMA JOAN BROWN, wife of the  
Transferor (or chargor) herein, hereby  
bar my dower in the within lands."*

However, execution by the wife without the above recital will be considered a bar of dower. A Transfer or Charge made by a married man which is not executed by his wife will be registered subject to the wife's dower rights, unless the Land Registrar is satisfied that dower does not apply.

The following is a list of examples where the wife of the owner is not entitled to dower:

- 1) Land held as partnership property;
- 2) Land held in joint tenancy;
- 3) Land held by two or more trustees (The Land Titles Act, Section 69(3));
- 4) The Estate of a chargee;
- 5) Wild lands (The Dower Act, section 5);
- 6) Land dedicated for highways (The Dower Act, section 7);
- 7) Mining lands, unless the husband dies entitled thereto;
- 8) Land held "to uses";
- 9) Where the wife is insane (The Dower Act, sections 12 and 13);
- 10) Where the wife has not lived in Ontario since the marriage (The Dower Act, section 12(2)).

A wife is not entitled to dower out of land registered as leasehold land under The Land Titles Act. A married woman who has not attained the age of majority may bar her dower in land being transferred or charged by her husband.

Since The Land Titles Act treats a trustee as an absolute owner, a bar of dower from the wife of the trustee is required where the Transferor is described as a trustee. This requirement does not apply where two or more Transferors are described as trustees as they are then deemed to hold as joint tenants unless the contrary is expressly stated (see section 69(3) of The Land Titles Act).

It should be pointed out that although under a land title Charge the registered owner retains the legal title, a wife is not entitled to dower where:

- (a) the registered owner acquired the land subject to a Charge and transferred the land subject to that Charge; or
- (b) the registered owner charged the land, subsequently became married to the wife, and transferred the land subject to that Charge.  
(See section 132 of The Land Titles Act) (repealed 1978, c.7, s.3).

In these circumstances, in order to show the Parcel Register free from dower, the Land Registrar will require an affidavit setting out the circumstances which disentitle the wife to dower. Examples of this affidavit appear on Pages 7-7 and 7-8.

Where a Court Order dispensing with the concurrence of a wife for the purpose of barring her dower has been obtained under section 13 of The Dower Act, a Transfer or Charge by her husband without a bar of dower may be registered free of dower provided Notice of the Order is registered prior to or is attached to or endorsed on the Transfer or Charge.

Where the Order was registered separately, the Transfer or Charge should contain a recital of the particulars of registration, e.g.:

*"An Order of the Supreme Court of Ontario dispensing with the concurrence of NORMA JOAN BROWN, the wife of the transferor, for the purpose of barring her dower, is registered as No. 58395."*

Where the title of a registered owner of land or a Charge has been made subject to possible dower rights and a bar of dower is subsequently obtained, an application may be made in the form shown on Page 7-9 to delete the entry from the Register.

Section 131 of The Land Titles Act provides a procedure whereby the Land Registrar may bar a wife's claim to dower in those cases where an instrument showing a bar of dower by the wife of the registered owner cannot be produced and registered.

## (2) THE FAMILY LAW REFORM ACT, 1978

As a result of this legislation, an affidavit of spousal status must accompany every instrument other than a cessation of charge, postponement of charge and transfer of charge or those executed by a corporation, executor, administrator (excluding an executor or administrator conveying for the purpose of paying debts), trustee in bankruptcy, Public Trustee, committee of a mentally incompetent person, Official Guardian, Sheriff, trustee of a religious institution or trustee of a school board which disposes of or encumbers any interest in real property. This affidavit replaces the affidavit of marital status. If the affidavit indicates that the transferor or chargor, etc. is not a spouse within the meaning of Section 1(f) of The Family Law Reform Act, 1978, at the time of the execution of the instrument, or at the time of the disposition or encumbrance, then the Land Registrar will not be concerned with the provisions of the said Act. If the affidavit indicates that the transferor, etc. is a spouse, one of the following must be attached to or form part of the instrument in order for the parcel register to be shown free and clear of the rights of the spouse of the transferor, etc.:

- (a) a consent to the transaction by the spouse of the transferor, etc. A consent must be in the form of an approval to the disposition or encumbrance. The mere signature of the spouse without any wording indicating approval is not acceptable.
- (b) the joining in the instrument by the spouse of the transferor, etc. "Joining in" by a spouse means the release of a specific interest in the property by that spouse either as a registered owner, or the release of rights in the matrimonial home by way of specific endorsement on the instrument not as a registered owner. A mere signature by the spouse of the transferor on the instrument other than as owner is not sufficient for the purpose of Section 42(1)(a) of The Family Law Reform Act, 1978.

NOTE: It is not necessary to search executions against a spouse who, not as owner and party, joins in or consents to an instrument under the provisions of section 42(1)(a) of The Family Law Reform Act, 1978.

- (c) an affidavit by the transferor, etc., stating that the property has never been occupied by the transferor, etc. and his or her spouse as a matrimonial home;
- (d) an affidavit by the transferor, etc. stating that his or her spouse has released all rights under Part III of The Family Law Reform Act, 1978, by a separation agreement;

- (e) an affidavit by the transferor, etc. stating that the property is not designated under Section 41 of The Family Law Reform Act, 1978 and that an instrument designating another property as the matrimonial home is registered and has not been cancelled; or
- (f) a court order under Section 44 of The Family Law Reform Act, 1978 authorizing the transaction or releasing the property as a matrimonial home. (This court order may also be registered separately pursuant to Section 2(10) of The Family Law Reform Act, 1978.)

Clause (c), (d), or (e) may not be sworn by a person under a power of attorney.

If one of the above is not provided, then the title of the transferee, etc. will be marked "subject to the rights of the spouse of (name of transferor, etc.) under Part III of The Family Law Reform Act, 1978." Where affidavit evidence is required, it may be included in the affidavit of legal age and spousal status. Affidavit evidence with respect to spousal status is required from joint tenants, trustees, partners, women and persons holding property to uses. Where an affidavit is made by a person described as trustee, the trustee will depose as to his or her spousal status and not the spousal status of the beneficiary.

Where a disposition or encumbrance is registered by way of notice or caution under Section 78 or 143 of The Land Titles Act or where property passes by the law of survivorship, the Land Registrar will not concern himself with the provisions of The Family Law Reform Act, 1978. However, the matrimonial home provisions of The Family Law Reform Act, 1978, apply equally to leasehold parcels as well as freehold parcels.

It should be noted that if the disposition or encumbrance was effective (i.e. fully executed and irrevocably and unconditionally delivered) before March 31st 1978, although not presented for registration until March 31st, 1978 or later, the provisions of The Family Law Reform Act, 1978, do not apply, but dower is still applicable to the situation. As a result, the Land Registrar, if satisfied by affidavit evidence by one of the parties or a solicitor that the disposition or encumbrance was fully executed and was irrevocably and unconditionally delivered to the transferee, chargee, etc. or to some person on behalf of the transferee, chargee, etc. before March 31st, 1978, may accept the old affidavit of age and marital status in lieu of the affidavit of age and spousal status.

Where a document submitted for registration on or after March 31st, 1978, was dated prior to March 31st, 1978, the Land Registrar will accept it without an affidavit of spousal status (if required) provided the transferors, chargors, etc., are co-owners and an affidavit of marital status indicates that they are "married" to each other. An affidavit stating that the grantor, transferor, mortgagor or chargor is "unmarried" or is "not married" will not be

acceptable as equivalent to a statement that he or she is not a spouse, nor will a bar of dower be treated as the equivalent of spousal approval or consent.

#### Deletion of Dower or Spousal Rights

As a result of The Family Law Reform Act, 1978, applications may be received to delete from the parcel register notations indicating the title is "subject to dower" or "subject to spousal rights".

With respect to dower, the Land Registrar will be able, on application, to delete the dower notation if satisfied that dower was not or is no longer applicable, (e.g. the husband was alive on March 31, 1978).

As to spousal rights, the Land Registrar will be able, on application, to delete the spousal rights notation if satisfied:

- (a) that the spouse who is entitled to possession has released all rights of possession under Part III of The Family Law Reform Act, 1978;
- (b) by affidavit evidence of the owning spouse or previous owning spouse under Section 42(3) of The Family Law Reform Act, 1978, that no right of possession existed at the time of the disposition or encumbrance; or
- (c) that the right of the spouse to possession under The Family Law Reform Act, 1978, has ceased because the spouses have divorced, or because the owning or previous owning spouse or the spouse entitled to possession has died.

#### Attorneys - Power to Consent on behalf of a spouse to a Disposition or Encumbrance

An attorney can consent to a disposition or encumbrance on behalf of a spouse under the provisions of The Family Law Reform Act, 1978, provided the power of attorney gives a clear authority to execute such a consent. It must be remembered that the right to possession under The Family Law Reform Act, 1978, is not an ownership right but a right to possession which may not be covered by many powers of attorney.

The following powers of attorney are wide enough to give an attorney a power to consent on behalf of a spouse pursuant to S.42(1)(a) of The Family Law Reform Act, 1978:

1. Dye & Durham Form 404-407 Revised April, 1978.
2. Dye & Durham Form 169 Revised April, 1978.

3. Newsome & Gilbert - Form 1068
4. Newsome & Gilbert - Form 218 (page 3 called Form 220,  
Revised March 31, 1978)

The following forms are not wide enough to give an attorney such power:

1. Dye & Durham - Form 404-407 Revised October, 1972.
2. Newsome & Gilbert - Form 218.

AFFIDAVIT

I, ERIC JONES, make oath and say -

1. The land hereby being transferred was purchased by me on May 1, 1973 subject to Charge No. 54321.
2. The said Charge is still outstanding and the attached Transfer is made subject thereto.

SWORN before me in the )  
City of Toronto in the )  
Municipality of Metropolitan ) "ERIC JONES"  
Toronto, )  
this 12th day of January, 1975 )

"A. PANE"  
A Commissioner, etc.

NOTE: This affidavit may be incorporated in the affidavit of legal age and marital status.

AFFIDAVIT

I, DENNIS LONG, make oath and say -

1. The land being transferred was transferred to me on August 1, 1970
2. On August 1, 1970, I charged the said land to XYZ Company Limited, and this Charge was registered as No. 21811.
3. At the time of registration of the said Charge, I was unmarried.
4. The said Charge is still outstanding and the attached Transfer is made subject thereto.

SWORN before me in the )  
City of Toronto in the )  
Municipality of Metropolitan ) "D. LONG"  
Toronto )  
this 15th day of October, 1971 )

"N. WRIGHT"  
A Commissioner, etc.

NOTE: This affidavit may be incorporated in the affidavit of legal age and marital status.

APPLICATION TO AMEND THE REGISTER BY DELETING  
DOWER RIGHTS

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THE LAND TITLES ACT SECTION 82

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

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I, GEORGE IAN BROWN, the registered owner of Parcel 25-1 in the Register for Section M-50 hereby apply to have the Register for the said Parcel amended by deleting the entry as to the dower of the wife, if any, of WILLIAM HENRY JACKSON out of the said lands.

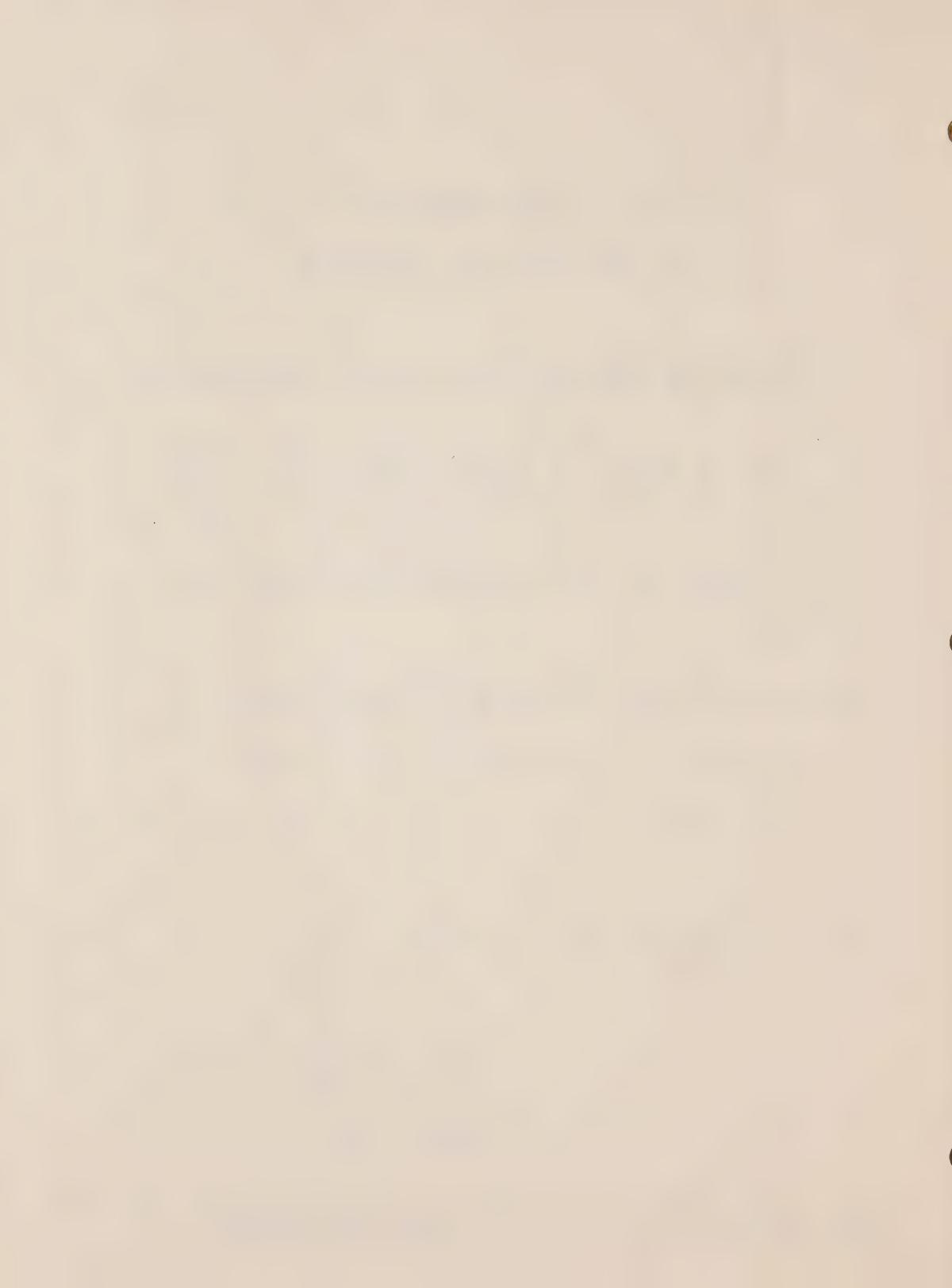
The evidence in support of this Application consists of:

- \*1. Bar of Dower by Mary Ann Jackson, wife of William Henry Jackson.

DATED at Toronto this 10th day of October, 1977.

"GEORGE IAN BROWN  
by his Solicitor  
TIMOTHY Q. LAW"

\*NOTE: An affidavit of subscribing witness must accompany the bar of dower.



## CHAPTER 8

### AFFIDAVITS

#### AFFIDAVIT OF SUBSCRIBING WITNESS

The execution of an instrument, other than by a corporation, must be witnessed, and each witness must verify by affidavit the execution by the parties whose signatures he has witnessed. The prescribed form for the Affidavit of Subscribing Witness is shown on Page 8-4. It must be adapted as indicated where a party has signed by making his mark, or in foreign characters, or where the instrument was executed under a Power of Attorney.

A Land Registrar has a discretionary power to accept an instrument for registration that is not verified by an Affidavit of Subscribing Witness, if he is satisfied that it was properly executed or to accept an affidavit that is irregular, deficient or different in form, but will normally exercise that power only in very exceptional circumstances. (See R.R.O. 1970, Reg. 553, Ss. 51, 63 as amended by O. Reg. 149/72).

#### AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

The legal stationers' form of the affidavit in common use is based on the prescribed form and must be adapted to the applicable situation as shown on pages 8-5 to 8-10.

In the sample affidavits on pages 8-5 to 8-10, statements in the printed forms that may be true, but which are not required in the circumstances have been deleted. An affidavit will not be refused if such a statement is not deleted.

Space has been provided in the legal stationers' form for the inclusion of a statement with respect to the residence of the vendor for the purposes of the Income Tax Act (Canada), which is permitted. However, an affidavit will be refused if it contains any other additional wording that is not relevant to the title to land (e.g. statements with respect to length of possession).

LAND TRANSFER TAX AFFIDAVIT

Land Registrars act as collectors of the tax payable under The Land Transfer Tax Act and are also responsible for collecting the tax payable under The Retail Sales Tax Act where chattels exceeding \$100.00 in value are sold in connection with land. The prescribed form of Land Transfer Tax Affidavit appears on Page 8-11.

Where the Land Registrar's assessment of tax payable in respect of an instrument presented for registration is contested or the amount cannot be ascertained, the instrument will be accepted and only the ascertainable or uncontested amount of tax will be collected by the Land Registrar if an undertaking in the form on Page 8-12 is completed.

AFFIDAVIT OF LOSS

Where a request has been made for the production of a certificate of ownership or certificate of charge but such certificate cannot be produced because it has been lost, the Land Registrar may accept an affidavit of loss in lieu thereof. A precedent for this affidavit appears on page 8-13.

AFFIDAVIT - NON-CONTRAVENTION  
OF THE PLANNING ACT

The Land Registrar is required to satisfy himself that instruments registered under The Land Titles Act comply with the subdivision and part lot control provisions of The Planning Act; such proof is at present not required with respect to instruments registered under The Registry Act. Accordingly, a Consent by the authority authorized to grant consents or an Affidavit of Non-contravention (see precedent on Page 8-14), is, generally speaking, required with respect to every freehold transfer, leasehold transfer, charge, transfer of easement and partial cessation of charge.

An affidavit or consent will not be required where,

- (a) the Land Registrar is satisfied on the face of the instrument that the land is being acquired or disposed of by a municipality or Her Majesty in right of Ontario or Canada; or
- (b) the Land Registrar is satisfied on the face of the instrument that it deals only with the whole of a lot or lots on a registered plan of subdivision; and that a by-law has not been passed deeming the plan not to be a plan of subdivision for the purposes of section 29(2) of The Planning Act; or

- (c) The Land Registrar is satisfied on the face of the instrument that the interest in land created thereby is for a term of less than 21 years.

The affidavit must set out the reason why the transaction does not contravene The Planning Act or simply cite the provision (i.e., section, subsection and clause) under which the transaction complies with The Planning Act. A bare statement that the instrument does not contravene the Act is not acceptable (see Page 8-14).

It should be noted that the consent of the Committee of Adjustment, Land Division Committee or Minister of Housing may be registered although it is generally attached to or endorsed on the instrument (See Page 10-2).

## AFFIDAVIT OF SUBSCRIBING WITNESS

I, VERA LOUISE MARTIN

of the City of Toronto

in the Municipality of Metropolitan Toronto

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed  
at Toronto by GEORGE IAN BROWN

\*See footnote

\*See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of Toronto

Municipality of Metropolitan Toronto

this 8th day of September, 1977

"I. M. WISE"

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

} "VERA LOUISE MARTIN"

\* Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (owner)".

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS  
MADE BY A PARTY WHO IS NOT A SPOUSE

I / ~~XXX~~  
JAY GREEN  
of the City of Toronto  
in the Municipality of Metropolitan Toronto

\* If attorney,  
see footnote

(~~sworn before me~~) make oath and say: When I / ~~XXX~~ executed the attached instrument,

I WAS / ~~WE ARE EXEMPT~~ at least eighteen years old;

and within the meaning of section 1(f) of The Family Law Reform Act, 1978,

(a) ~~XXXXXX~~ / I WAS NOT a spouse.

Strike out  
inapplicable  
clauses.

~~XXX~~

~~XXXXXX~~.

~~XXXXXX~~ ~~We are spouses~~ ~~and~~ ~~not~~ ~~spouses~~

\*\* Not a  
matrimonial  
home, etc.,  
see footnote.

Resident of  
Canada, etc.

~~XXXXXX~~ SWORN before me at the City  
of Toronto in the Municipality of  
Metropolitan Toronto  
this 2nd day of August 19 78

"JAY GREEN"

"M.L. JONES"

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS  
MADE BY ONE SPOUSE ON BEHALF OF BOTH,  
I / ~~XX~~ JANE RICH BOTH BEING OWNERS AND PARTIES

of the City of Toronto

in the Municipality of Metropolitan Toronto

\* If attorney,  
see footnote

When ~~XX~~ / WE executed the attached instrument,

~~IXWASX~~ / WE WERE EACH at least eighteen years old;

and within the meaning of section 1(f) of The Family Law Reform Act, 1978,

(~~XXXXX WAS X X X WAS NOT X response.~~

Strike out  
inapplicable  
clauses.

(b) THOMAS RICH was my spouse.

~~X X X X X was not spouse of mother~~

\*\* Not a  
matrimonial  
home, etc.,  
see footnote.

Resident of  
Canada, etc.

~~ISWORN~~ SWORN before me at the City  
of Toronto, in the Municipality of  
Metropolitan Toronto

this 2nd day of October 1978 ]

"JANE RICH"

"M. FRICK"

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**AFFIDAVIT AS TO AGE AND SPOUSAL STATUS**  
**MADE BY SPOUSES, BOTH BEING OWNERS AND PARTIES**  
**XX / WE      RAYMOND BRIGHT and SALLY BRIGHT**

of the      City of Toronto

in the      Municipality of Metropolitan Toronto

\* If attorney,  
see footnote

(severally) make oath and say:                    When XX / WE executed the attached instrument,

XX / WE WERE EACH at least eighteen years old;

and within the meaning of section 1(f) of The Family Law Reform Act, 1978,

XX / WE WERE SPOUSES.

Strike out  
inapplicable  
clauses.

XX / WE WERE SPOUSES.

WE WERE SPOUSES.

(c) We were spouses of one another.

\*\* Not a  
matrimonial  
home, etc.,  
see footnote.

Resident of  
Canada, etc.

(SEVERALLY) SWORN before me at the City  
 of Toronto, in the Municipality of  
 Metropolitan Toronto  
 this 4th day of September 19 78

}  
 "RAYMOND BRIGHT"  
 "SALLY BRIGHT"

"B. CARTER"

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS  
MADE BY A PARTY WHO IS A SPOUSE, AND WHOSE SPOUSE CONSENTS  
I / WE KEN ANDERSON OR JOINS IN NOT AS AN OWNER AND PARTY

of the City of Toronto

in the Municipality of Metropolitan Toronto

(X) If attorney,  
see footnote make oath and say: When I / WE executed the attached instrument,

I WAS / XXXXXXXXXX at least eighteen years old;

and within the meaning of section 1(f) of *The Family Law Reform Act, 1978*,

(XXXXXXXXXXXXXX) was my spouse.

**Strike out  
inapplicable  
clauses.**

(b) KAREN ANDERSON was my spouse.

(XXXXXXXXXXXXXX) was my spouse.

\*\* Not a  
matrimonial  
home, etc.,  
see footnote.

Resident of  
Canada, etc.

(XXXXXXXXXXXXXX) SWORN before me at the City  
of Toronto, in the Municipality of  
Metropolitan Toronto  
this 19th day of November 1978

"KEN ANDERSON"

"MARTIN BAKER"

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS  
MADE BY A PARTY WHO IS A SPOUSE, BUT WHOSE SPOUSE DOES NOT  
I / ~~XXX~~ JILL SINCLAIR JOIN IN OR CONSENT

of the City of Toronto

in the Municipality of Metropolitan Toronto

\* If attorney,  
see footnote

~~(see next page)~~ make oath and say: When I / ~~XXE~~ executed the attached instrument,

I WAS / ~~WEXWERE EACH~~ at least eighteen years old;

and within the meaning of section 1(f) of The Family Law Reform Act, 1978,

(a) I WAS / ~~I WAS NOT~~ a spouse.

Strike out  
inapplicable  
clauses.

~~(b) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX was my spouse~~

~~XXXXXXXXXXXXX spouse X & X both XXXX~~

\*\* Not a  
matrimonial  
home, etc.,  
see footnote.

Resident of  
Canada, etc.

The property being transferred in the within instrument has never  
been occupied by me and my spouse as our matrimonial home. (Sample  
situation).

~~XXXXXX~~ SWORN before me at the City  
of Toronto, in the Municipality of  
Metropolitan Toronto  
this 23rd day of January 19 78

"JILL SINCLAIR"

"R.S. HOWARD"

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**AFFIDAVIT AS TO AGE AND SPOUSAL STATUS  
MADE BY A PERSON SIGNING ON BEHALF OF A PARTY UNDER A  
POWER OF ATTORNEY**

**of the City of Toronto**

**in the      Municipality of Metropolitan Toronto**

If attorney,  
see footnote

(~~generally~~) make oath and say:

When I /  WE executed the attached instrument,

as attorney for ALEXANDER JOHNSON

IWWANIS X X X X X R E X R E X A C T I X X T I D E S T X M E R H E E N X X E X D E X M D

~~word~~ Within the meaning of section 1(f) of The Family Law Reform Act, 1978,

(a) ~~XK XWAS~~ /HE WAS NOT a spouse.

**Strike out  
inapplicable  
clauses.**

(xxx We never suspect of one another.

and when he executed the Power of Attorney, he was at least 18 years old.

\* Not a  
matrimonial  
home, etc.,  
see footnote.

Resident of  
Canada, etc.

(XXXXXXXXXX) SWORN before me at the City  
of Toronto, in the Municipality of  
Metropolitan Toronto  
this 1st day of March 1978

"JOHN DAVID CROSS"

"STEVEN SPENCER"

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Note: (1) The Attorney must depose as to the age of the principal at the time of execution of the power of attorney and the spousal status of the principal at the time of the execution of the instrument.

(2) There is no necessity for the attorney to depose as to his or her own age, either when exercising the power or on the power of attorney document.



## LAND TRANSFER TAX - UNDERTAKING

DATE  
NAME  
FIRM  
ADDRESS  
PHONE NO.

To: Comptroller of Revenue  
Land Transfer Tax Section  
Ministry of Revenue  
Parliament Buildings  
Toronto, Ontario  
M7A 1Y2

IN THE MATTER OF The Land Transfer Tax Act, S.O. 1974, Chapter 8  
as amended.

AND IN THE MATTER OF a conveyance dated the \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_  
of (give brief description of land including lot and plan or  
concession or parcel and section, as the case may be).

In consideration of the registration by the Land Registrar of  
the above conveyance, as Instrument No. \_\_\_\_\_, I/we  
hereby undertake as follows:

1. To present such documentation, accounting records and other information relating to the facts and circumstances of the conveyance as may be necessary to enable the Land Transfer Tax Section to reach a decision as to the value of the consideration for the purpose of The Land Transfer Tax Act.
2. To pay such Land Transfer Tax (or further Land Transfer Tax) as may be exigible together with interest thereon as provided by The Land Transfer Tax Act, following perusal of such evidence, and to deliver an amended Land Transfer Tax Affidavit in respect of any such tax or additional tax.

SIGNED \_\_\_\_\_ (Seal)

WITNESSED \_\_\_\_\_

ATTENTION:

This undertaking may be used only where an affidavit of residence setting out that the transferee is not a non-resident person or corporation is attached to the conveyance.

This form should be completed in triplicate.  
The original should be forwarded to the Land Transfer Tax Section by the Land Registry Office, with the solicitor and Land Registry Office each retaining a copy.

AFFIDAVIT AS TO LOSS OF  
CERTIFICATE OF OWNERSHIP OF CHARGE

IN THE MATTER of Parcel 25-1 in the Register for Section M-50  
in the Land Registry Office for the Land Titles Division of  
Toronto and York South (No. 66).

I, GEORGE IAN BROWN, make oath and say as follows:

1. That I am the registered owner of Charge  
No. 12345 registered against the above-  
mentioned Parcel;
2. That the Certificate of Ownership of the  
said Charge cannot be produced for the  
reason that it has been lost.

SWORN before me at the City )  
of Toronto in the Municipality )  
of Metropolitan Toronto, this ) "GEORGE IAN BROWN"  
sixth day of April, 1977. )

"I. M. WISE"

A Commissioner, etc.

# The Land Titles Act

IN THE MATTER of the PLANNING ACT (as amended)

AND IN THE MATTER of the TITLE TO Parcel 25-2 in the Register for Section M-50, in the Land Registry Office for the Land Titles Division of Toronto & York South (No. 66), being designated as Part I on a plan of survey of record in the Land Registry Office for the Land Titles Division of Toronto & York South (No. 66) as  
66R-301

Transfer, Charge,  
Caution, Lease

## AND IN THE MATTER OF A Transfer

THEREOF, FROM JOHN ALLAN SMITH  
 TO GEORGE IAN BROWN  
 DATED March 14, 1977

I, TIMOTHY Q. LAW

of the

ad

in the

MAKE OATH AND SAY AS FOLLOWS:

1. I am Solicitor for the Transferor named in the above mentioned Instrument, and have knowledge of the matters hereinafter sworn.

2. The said Instrument, and the conveyance or other dealing with land affected thereby, do not contravene the provisions of The Planning Act, as amended, because

Delete  
if not  
applicable

(a) *The present registered owner does not retain the fee or the equity of redemption in, or a power or right to grant, assign or exercise a power of appointment with respect to any land abutting the land affected by the instrument.*

- OR -

2. *The said Instrument, and the conveyance or other dealing with the land affected thereby, comply with section 29(2)(b) of The Planning Act, as amended.*

State  
other  
reason  
if any

SWORN before me

at the CITY OF TORONTO

in the MUNICIPALITY OF METROPOLITAN  
TORONTO  
this twentieth

day of April,

19 77

"TIMOTHY Q. LAW"

"J. M. WISE"

A Commissioner for Taking Affidavits, etc.

CHAPTER 9CAUTIONS

A person who claims to have a proprietary interest (i.e., a right to call for or receive a transfer of land, charge or transfer of charge) in land or in a Charge of which he is not the registered owner may register a caution to protect that interest. Once a caution has been registered, the registered owner of the land or charge cannot deal with the land or charge without consent of the cautioner. However, where the dealing is of such a nature that it cannot detrimentally affect the interest of the cautioner as claimed in the affidavit filed with the caution, or where the transferee, chargee or other person desiring the registration of the dealing is willing that the same should be registered subject to the continuance of the caution and the Land Registrar thinks fit so to register it, consent of the cautioner is not required. For example, the Land Registrar may register a transfer notwithstanding the registration of a caution based upon an agreement of purchase and sale provided that the transfer is executed by the transferee and includes a statement that the transferee agrees to be bound by the terms and conditions of the agreement and to fulfill the obligations of the vendor under the agreement. The Regulations under The Land Titles Act prescribe forms for the Application to Register a Caution and the supporting affidavit (see R.R.O. 1970, Reg. 553, Forms 10 and 11) examples of which are shown on Pages 9-4 and 9-5.

A caution generally can be registered to protect only a proprietary interest in land or in a Charge. The affidavit in support must set out sufficient detail to enable the Land Registrar to satisfy himself that the interest the cautioner is claiming is a proprietary interest in land or in a Charge which should be protected by preventing any dealing with the land or Charge by the registered owner. The document, if any, upon which the Cautioner's claim is based does not have to form part of the Application to register the Caution. Examples of interests commonly protected by registering a Caution are:

- (1) The interest of a purchaser under an Agreement of Purchase and Sale. The affidavit must state that the Agreement (or some memorandum or note thereof) was in writing, or that there has been part performance of an oral contract, that it is enforceable, and must name the parties. If the Agreement has been assigned, details of the Assignment must be given to establish that the Cautioner is now entitled to the rights of the original purchaser.
- (2) The interest of a chargee under a floating charge contained in a trust deed, debenture or other security document where the floating charge has crystallized as a result of default and the chargee has the authority to sell the lands affected by the charge.

- (3) The interest of a beneficiary under a trust agreement where the beneficiary claims to be entitled to and to have called for a transfer of the lands to him from the trustee.
- (4) The interest of an optionee under an option to purchase when the optionee has exercised the option.
- (5) Any interest that may be protected by way of caution pursuant to any Act of Ontario or Canada.

A caution based upon a Vendor's Lien (for unpaid purchase price including unadvanced mortgage money), a Purchaser's Lien, Lodgement of Title Documents, or a right of first refusal will not be accepted for registration. Any of these interests may be protected by registering a notice under section 78 of The Land Titles Act. Examples of these notices appear on Pages 9-6, 9-7, 9-8 and 9-9.

A notice of a Vendor's Lien or of a Purchaser's Lien, as will be seen from the Precedents on Pages 9-6 and 9-8 has a registration period of only one year. This registration period may be extended from time to time for a further period of 1 year by registering an Extended Notice as set out on Page 9-7. The Extended Notice will be accepted for registration only if presented within the 1 year registration period of the prior notice or prior extended notice.

A Certificate of Lis Pendens will not be accepted for registration either alone or as the basis of a caution or a notice, but the cause of action itself may be sufficient to qualify for the registration of a caution.

#### APPLICATION TO REMOVE CAUTION

The owner of the land or of a charge against which a Caution has been registered may at any time initiate proceedings to have the Caution deleted from the Register by making an Application to the Land Registrar in the prescribed form shown on Page 9-10. Either the registered owner or his solicitor may sign the Application.

#### RENEWAL OF CAUTION

Although section 143(3) of The Land Titles Act provides that a Caution ceases to have effect five years from the date of its registration unless renewed within that time, it should be noted that a Caution will continue in effect unless, at least thirty days before the expiration of the five-year period the Land Registrar notifies the Cautioner that the Caution will cease to have effect unless renewed. After five years, the Land Registrar may terminate the Caution upon thirty days notice to the Cautioner, if the Cautioner

does not renew within that 30-day period. A precedent for the Renewal appears on Page 9-11

#### CONSENT OF CAUTIONER

Where the Cautioner wishes the Caution to continue but is prepared to permit the registration of a particular instrument which otherwise could not be registered, (e.g., a Transfer of an Easement or Right-of-Way) he may consent to the registration of that instrument. The consent (a precedent is given on Page 9-12 ) is to be attached to the instrument to which it relates, and it may be signed by the Cautioner or his solicitor.

#### CAUTION BY REGISTERED OWNER

The Land Registrar may, in his discretion, permit the registered owner to register a Caution if he is satisfied, by affidavit, that special circumstances exist as a result of which a Transfer or Charge given by him should not be registered without notice to him. (See section 145).

#### WITHDRAWAL OF CAUTION

A Caution may be withdrawn or cancelled by the Land Registrar upon receiving the prescribed authorization of the cautioner or his solicitor together with the prescribed affidavit in support thereof. (See R.R.O. 1970, Reg. 553, Forms 13 and 14). Completed examples of these forms appear on Pages 9-13 and 9-14.

When the cautioner receives a transfer of the fee with respect to the lands covered by his caution, the caution will be merged in the fee upon an endorsement on the transfer by the transferee-cautioner or his solicitor requesting the Land Registrar to merge the said caution in the fee. An additional fee is payable in respect of the merger endorsement on the transfer.

APPLICATION TO REGISTER CAUTIONTHE LAND TITLES ACT SECTION 143

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, GEORGE IAN BROWN, of the Borough of East York in the Municipality of Metropolitan Toronto, being interested in the land registered in the name of JOHN ALLAN SMITH, as Parcel 25-1 in the Register for Section M-50, require that no dealing with the land be had on the part of the registered owner until notice has been served upon me.

My address for service is 30 Secluded Crescent, Leaside, Ontario..

DATED at Toronto this 15th day of October, 1973.

"GEORGE IAN BROWN  
by his Solicitor  
TIMOTHY Q. LAW"

AFFIDAVIT IN SUPPORT OF APPLICATION  
TO REGISTER CAUTION

I, GEORGE IAN BROWN, of the City of Toronto in the Municipality of Metropolitan Toronto, make oath and say as follows:

I am interested in the land mentioned  
in the annexed Caution and the particulars  
of my interest are as follows:

I am the purchaser of the land mentioned  
in the annexed Caution under a written Agreement  
of Purchase and Sale executed by JOHN ALLAN SMITH  
as vendor, dated February 4, 1973. The said  
Agreement of Purchase and Sale is still  
enforceable.

SWORN before me at the City )  
of Toronto in the Municipality )  
of Metropolitan Toronto this ) "GEORGE IAN BROWN"  
first day of August, 1973. )

"I. M. WISE"

A Commissioner, etc.

NOTE: A solicitor may make this affidavit on behalf of his  
client, and an authorized officer may depose as to the  
interest of a corporate cautioner.

APPLICATION TO REGISTER  
NOTICE OF VENDOR'S LIEN

THE LAND TITLES ACT SECTION 78

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

XYZ DEVELOPMENTS LIMITED

being interested in the land entered  
as Parcel 25-1 in the Register for  
Section M-50 of which JOHN ALLAN SMITH  
is the registered owner

hereby applies to have Notice of a Vendor's Lien entered on  
the parcel register for a period of one year from the registration  
hereof, to protect the applicant's right to receive the unpaid  
balance of the purchase price under Transfer No. A-64104, in the  
amount of \$5,000 (as represented by unadvanced principal under  
charge No. 24869).

This application is not being made for any fraudulent or improper  
purpose.

The address for service of XYZ Developments Limited is 710 Bloor  
Street West, Toronto.

DATED at Toronto this 12th day of May, 1977.

(Signed) XYZ DEVELOPMENTS LIMITED  
by its Solicitor  
R.S. Simpson

NOTE: The Notice may be deleted from the parcel register upon:

- (1) an application stating that the Notice of Lien has expired  
as a result of passage of time - i.e., 1 year; or
- (2) an application supported by affidavit evidence that the  
Lien no longer exists. In this regard, the evidence required  
must be either an acknowledgement by the vendor that the  
money has been paid or proof of payment (i.e., receipts,  
cancelled cheques); or
- (3) an application supported by the consent of the party  
registering the notice of the Lien.

APPLICATION TO REGISTER  
EXTENDED NOTICE OF VENDOR'S LIEN

THE LAND TITLES ACT SECTION 78

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

XYZ DEVELOPMENTS LIMITED  
being interested in the land entered  
as Parcel 25-1 in the Register for  
Section M-50 hereby applies to have  
Extended Notice of the Vendor's Lien, which was referred to in the  
Notice registered on the 13th day of May, 1976 as Number 264127,  
entered on the parcel register for a period of 1 year from the  
registration hereof.

This Application is not being made for any fraudulent or  
improper purpose.

The address for service of XYZ Developments Limited is  
710 Bloor Street West, Toronto.

DATED at Toronto this 29th day of April, 1977.

(Signed) XYZ DEVELOPMENTS LIMITED  
by its Solicitor  
R. S. SIMPSON

NOTE: The above form may be adapted to extend a notice of a  
purchaser's lien.

APPLICATION TO REGISTER  
NOTICE OF PURCHASER'S LIEN

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO.66)

GIBSON NOVELTY COMPANY LIMITED  
 being interested in the land entered  
 as Parcel 25-1 in the Register for  
 Section M-50 of which JOHN ALLAN SMITH  
 is the registered owner hereby applies  
 to have Notice of a Purchaser's Lien  
 entered on the parcel register  
 in the amount of \$5,000.00 in respect  
 of all payments made by GIBSON NOVELTY  
 COMPANY LIMITED to JOHN ALLAN SMITH  
 pursuant to an Agreement of Purchase and  
 Sale dated April 1, 1977, for a period  
 of one year from the registration hereof.

This Application is not being made for any fraudulent  
 or improper purpose.

The address for service of Gibson Novelty Company  
 Limited is 290 First Avenue, Trenton, Ontario.

DATED at Toronto this 12th day of July, 1977.

(Signed) GIBSON NOVELTY COMPANY LIMITED  
 by its Solicitor  
 RALPH R. CLEMENTS

NOTE: A. The Notice may be deleted from the parcel register upon:

- (1) an application stating that the Notice of Lien has expired as a result of passage of time - i.e., 1 year; or
- (2) an application supported by affidavit evidence that the Lien no longer exists. In this regard, the evidence required must be either an acknowledgement by the purchaser that the money has been repaid or proof of repayment (i.e., receipts, cancelled cheques); or
- (3) an application supported by the consent of the party registering the notice of the lien.

B. This notice must be accompanied by a land transfer tax affidavit. The amount of tax to be collected is based upon the full amount of consideration in the agreement of purchase and sale. No tax need be collected, however, if Section 6 of the affidavit is completed stating:

- (a) that default has occurred in the agreement of purchase and sale mentioned in the notice;
- (b) that the purchaser does not intend to complete the said agreement or to continue to acquire the land therein;
- (c) that the purchaser is entitled to repayment of the consideration paid by him on account of the purchase price; and
- (d) the amount or value for which such lien is claimed.

Where the affidavit is completed as above, the consideration should be shown as nil.

APPLICATION TO REGISTER  
NOTICE OF LODGEMENT OF TITLE DOCUMENTS

THE LAND TITLES ACT SECTION 78

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

THE ROYAL BANK OF CANADA  
being interested in the land entered  
as Parcel 25-1 in the Register for  
Section M-50 of which JOHN ALLAN SMITH  
is the registered owner  
hereby applies to have Notice of Lodgement of Titles Documents  
between THE ROYAL BANK OF CANADA and JOHN ALLAN SMITH  
entered on the parcel register

The evidence in support of this Application consists of:

1. An executed copy of the Lodgement of Titles Documents  
Agreement dated the 28th day of June 1977.

- or -

1. Affidavit of Thomas Franklin, Bank Manager.

The address for service of The Royal Bank of Canada is 6000  
Bloor Street East, Toronto.

DATED at Toronto this 12th day of July, 1977.

(Signed)      THE ROYAL BANK OF CANADA  
                  by its Solicitor  
                  ALEX R. DAVIES

NOTE: This form may be adapted if the agreement is based upon  
a right of first refusal.

APPLICATION FOR NOTICE TO BE  
SERVED UPON CAUTIONER

THE LAND TITLES ACT SECTION 144(2)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

JOHN ALLAN SMITH, the registered owner of the land registered as Parcel No. 25-1 in the Register for Section M-50 applies for a Notice to be served upon GEORGE IAN BROWN terminating Caution No. 12345 registered by SAMUEL S. LAWYER on behalf of GEORGE IAN BROWN.

This Application is made upon the following grounds:

(Example) The Caution was registered to protect the interest of GEORGE IAN BROWN under an Agreement of Purchase and Sale made in writing between JOHN ALLAN SMITH as Vendor and the said GEORGE IAN BROWN as Purchaser. Default has been made by the said GEORGE IAN BROWN under the Agreement, and the time limited for the completion of the transaction having expired the said Agreement is not enforceable and the title of the applicant is no longer subject thereto.

The Address of JOHN ALLAN SMITH for service is:  
1000 Snob Hill Road, Toronto.

DATED at Toronto this 10th day of March, 1977.

(Signed) JOHN ALLAN SMITH  
by his Solicitor  
TIMOTHY Q. LAW

APPLICATION TO REGISTER  
RENEWAL OF CAUTION

THE LAND TITLES ACT SECTION 143

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, GEORGE IAN BROWN,  
being interested in the land entered as  
Parcel 25-1 in the Register for Section M-50  
hereto apply to renew Caution No. 12345.

This application is not being made for any fraudulent or improper purpose.

DATED at Toronto this 4th day of July, 1976.

(Signed) GEORGE IAN BROWN  
by his Solicitor  
TIMOTHY Q. LAW

CONSENT OF CAUTIONERTHE LAND TITLES ACT SECTION 144(1)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

1. GEORGE IAN BROWN, the Cautioner, named in Caution No. 12345, in respect of the land registered as Parcel 25-1 in the Register for Section M-50 hereby consents to the registration of a Transfer of Easement dated May 28, 1976 from JOHN ALLAN SMITH to THE HYDRO ELECTRIC COMMISSION OF THE BOROUGH OF NORTH YORK
2. This consent is not to be construed to be a cessation of the said Caution, but such Caution shall continue in full force and effect.

DATED at Toronto this 4th day of July, 1976.

GEORGE IAN BROWN  
by his Solicitor  
TIMOTHY Q. LAW

CESSATION OF CAUTIONR.R.O. 1970, REG. 553, SECTION 20

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, GEORGE IAN BROWN, of the City of Toronto in the Municipality of Metropolitan Toronto, the Cautioner named in a Caution No. 20202 in respect of the land registered as Parcel 25-1 in the Register for Section M-50 hereby authorize you to enter in the Register a Cessation of the Caution.

DATED at Toronto the 7th day of March, 1977.

GEORGE IAN BROWN  
by his Solicitor  
TIMOTHY Q. LAW

Witness:

IDA MAY BAKER

NOTE: If the cessation of caution is signed by the solicitor it need not be accompanied by an affidavit of the solicitor stating that he is authorized to give the cessation.

AFFIDAVIT IN SUPPORT  
OF CESSATION OF CAUTION

I, IDA MAY BAKER of the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, make oath and say:

I was present and saw the attached  
cessation of Caution executed and I  
verily believe that the person whose  
signature I witnessed is the solicitor  
for the Cautioner referred to therein.

SWORN before me at the City                )  
of Toronto in the Municipality            ) "IDA MAY BAKER"  
of Metropolitan Toronto, this              )  
10th day of March, 1977.                  )

"I. M. WISE"

A Commissioner, etc.

## CHAPTER 10

### NOTICES

#### AGREEMENT

Rights under an unregistered agreement, or any other unregistered estate, right, interest or equity in land may be protected by the registration of a Notice under section 78 of The Land Titles Act. A precedent for an Application under section 78 appears on Page 10-3. Where the right to be protected is based upon an agreement, the original or an executed copy of the Agreement must be attached to the Application. The Agreement will be checked against the Application to ensure that it is the Agreement referred to in the Application. If the Application refers to schedules, it will be refused if those schedules have been omitted from the Agreement. An Application to register Notice of an Agreement may be made by any person, whether or not a party to the Agreement. It is not necessary for the registered owner to consent to the registration of a Notice. It should be noted, however, that where the registered owner is not a party to the Agreement, the Application will not be accepted unless the instruments through which the interest is claimed have been previously registered or referred to in Notices entered on the Register.

#### APPLICATION TO REGISTER NOTICE OF COMPLIANCE

The form of application shown on Page 10-4 is normally used when terms and conditions contained in a Subdivision Agreement with the municipality have been partly or fully complied with by the developer.

#### APPLICATION TO REGISTER NOTICE OF PARTIAL RELEASE AND APPLICATION TO DELETE NOTICE OF AGREEMENT

The form of Application shown on Page 10-5 is to be used either when all or some of the lots registered as one parcel have been released from only some of the terms of a registered Subdivision Agreement, or when only some of the lots contained in one parcel have been released from all the terms of a registered Subdivision Agreement. The Application shown on Page 10-6 is used when a Notice of a Subdivision Agreement has been entered on the Register and all its terms have been released with respect to all lots in each parcel mentioned in the Application. Under the Application shown on Page 10-5 the Land Registrar notes the release on the Register; under the Application shown on Page 10-6 he deletes the entry of the Notice of the Subdivision Agreement from the Register. The Notice will not be deleted unless the Land Registrar is satisfied that the parcel mentioned in this Application has been

completely released and discharged from all the provisions of the Agreement.

APPLICATION TO AMEND THE REGISTER TO DELETE  
RIGHTS BY REASON OF THEIR EXPIRATION

A common situation involving rights exercisable for a specified term occurs where a developer is obliged under the terms of a Sub-division Agreement to grade land included in the plan for proper drainage after the plan has been registered and the lots transferred. The Transfers by the developer to the purchasers of individual lots will normally reserve a right to enter upon the property for a specified period of time (often one year) to permit the developer to fulfill this obligation. At the expiration of the period, an Application may be made, in the form shown on Page 10-7 to have the reference to the right of entry deleted from the register.

APPLICATION TO REGISTER NOTICE OF A DECISION OF THE  
COMMITTEE OF ADJUSTMENT, THE LAND DIVISION COMMITTEE,  
OR THE MINISTER OF HOUSING

The decision of the Committee of Adjustment, Land Division Committee or Minister of Housing may authorize a minor variance from the provisions of a by-law implementing an official plan, or from a restricted area or building by-law. A Notice of such a decision may be entered on the Register under an Application in the form shown on Page 10-8.

A consent to a severance under the subdivision or part lot control provisions of The Planning Act is normally endorsed on, or attached to the instrument.

APPLICATION TO REGISTER  
NOTICE OF AN AGREEMENT

THE LAND TITLES ACT SECTION 78

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, JOSEPH JAMES THOMAS,

being interested in the land entered

as Parcel 25-1 in the Register for

Section M-50 of which GEORGE IAN BROWN

is the registered owner

hereby apply to have Notice of an Agreement dated the

10th day of July, 1973,

made between GEORGE IAN BROWN and JOSEPH JAMES THOMAS

entered on the parcel register.

The evidence in support of this Application consists of:

1. An executed copy of the said Agreement

This application is not being made for any fraudulent or improper purpose.

My address for service is 51 Pinewood Avenue, Toronto

(Signed) "Joseph James Thomas

by his Solicitor

Timothy Q. Law"

APPLICATION TO REGISTER  
NOTICE OF COMPLIANCE

THE LAND TITLES ACT SECTION 78

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

QUALITY DEVELOPMENTS COMPANY LIMITED,  
the registered owners of Parcels 25-1, 26-1,  
28-1, 29-1 and 30-1 in the Register for  
Section M-50, hereby applies to have Notice of Compliance  
with terms of an Agreement dated the 5th day of September  
1973 and registered as Instrument No. 162534 entered on the  
parcel register. \*

The evidence in support of this Application consists of:

1. The letter of the Clerk of the Borough of Scarborough.

DATED at Toronto this 7th day of September, 1977.

"QUALITY DEVELOPMENTS  
COMPANY LIMITED  
by its Solicitor,  
Timothy Q. Law"

\*Note: Where the Agreement has been complied with in respect  
of only part of the parcel, a description of the part  
must be included in the Application.

APPLICATION TO REGISTER  
NOTICE OF PARTIAL RELEASE

THE LAND TITLES ACT SECTION 78

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

QUALITY DEVELOPMENTS COMPANY LIMITED

the registered owners of Parcels 25-1, 26-1, 28-1, 29-1 and 30-1  
in the register for Section M-50 applies to have notice of a  
partial release of certain terms of an agreement dated the 5th  
day of September, 1973 and registered as Instrument No. 162534  
entered on the parcel register.\*

This application is made on the basis that certain terms of the  
said agreement remain in full force and effect.

The evidence in support of this Application consists of:

1. Release and Discharge given by the Corporation of the  
Borough of Scarborough attached hereto.

DATED at Toronto this 2nd day of June, 1977.

"QUALITY DEVELOPMENTS COMPANY LIMITED  
by its Solicitor  
Timothy Q. Law"

\*NOTE: Where the Agreement has been complied with in respect  
of only part of the parcel, a description of the part  
must be included in the Application.

APPLICATION TO DELETE NOTICE AGREEMENTTHE LAND TITLES ACT SECTION 106(2)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

QUALITY DEVELOPMENTS COMPANY LIMITED,

The registered owners of Parcel 25-1 in the Register for  
Section M-50,

hereby applies to have the Register for the said Parcel amended  
by deleting Notice of Agreement No. 162534 and Notice of Partial  
Release No. 174133.

This application is made on the basis that the land has been  
released or discharged from all the terms and conditions of the  
agreement.

The evidence in support of the Application consists of:

1. Release and Discharge given by the Corporation of the  
Borough of Scarborough attached hereto.

DATED at Toronto this 20th day of October, 1973.

"QUALITY DEVELOPMENTS  
COMPANY LIMITED

by its Solicitor  
Timothy Q. Law"

NOTE: This application may be made by the municipality in which  
case a formal release and discharge will not be necessary.

APPLICATION TO AMEND THE REGISTER  
THE LAND TITLES ACT SECTION 82

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, GEORGE IAN BROWN,  
the registered owner of  
Parcel 25-1 in the Register  
for Section M-50  
hereby apply to have the Register for the said Parcel amended  
by deleting therefrom the right of entry reserved to QUALITY  
DEVELOPMENTS COMPANY LIMITED by Transfer 50505 by reason of its  
expiration.

DATED at Toronto this 1st day of November, 1977.

"George Ian Brown  
by his Solicitor  
Timothy Q. Law"

APPLICATION TO REGISTER  
NOTICE OF A DECISION OF  
THE COMMITTEE OF ADJUSTMENT

THE LAND TITLES ACT SECTION 78

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

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I, GEORGE IAN BROWN,  
the registered owner of Parcel 25-1 in  
the Register for Section M-50  
hereby apply to have Notice of the Decision of the Committee  
of Adjustment entered on the parcel register.

The evidence in support of this Application consists of:

1. Certificate of the Secretary-Treasurer of the  
Committee of Adjustment.

DATED at Toronto this 3rd day of August, 1977

"George Ian Brown  
by his Solicitor  
Timothy Q. Law"

CHAPTER 11LEASESNOTICE OF LEASE & LEASEHOLD PARCELS

A Lease or Agreement for a Lease may be entered on the Register by way of Notice similar to a Notice of an Agreement. The prescribed form of Application is shown on Page 11-3. If the unexpired term of the lease is for 21 years or more (including any right of renewal), the lessee may apply to the Land Registrar to be registered as the owner of a leasehold title. A precedent for this application appears on Page 11-4.

If a lease is made and signed by the registered owner of the land or his attorney, any interested party can make the Application to have a Notice of the Lease entered on the Register. If the owner or his attorney is not a signing party (e.g., the lease is signed by an agent not under a power of attorney), the owner must consent to the Application. The original or an executed copy of the lease must form part of the Application; the Application will be refused if the copy is not executed (e.g., if the names of the parties are typewritten in the location where their signatures would normally appear). The procedure of attaching to an Application for registration of a Notice of a Lease, (especially a "percentage lease"), an affidavit setting out only certain terms of the lease is not acceptable.

Where a Notice of a Lease or Agreement for a Lease has been registered, a Notice of a Sublease, Assignment of Lease, Charge of Lease, Assignment of the lessor's interest (i.e., assignment of rents) or Determination of the Lease may be registered.

Where a lessee is registered as the owner, he may Transfer or Charge his leasehold parcel. The first page of the stationer's form of Transfer or Charge of freehold land can be readily adapted, as shown on Pages 11-5 and 11-6. It should be noted that if the Crown is the owner of the freehold, certain dealings with the leasehold interest may require the consent of the Crown. Where such a consent is required, the stipulation will be enforced by the Land Registrar.

NOTICE OF SUBLEASE  
OR ASSIGNMENT OF LEASE

The precedent given on Page 11-7 may be used where the instrument is a Sublease or an Assignment.

NOTICE OF CHARGE OF LEASE

A precedent for the application is given on Page 11-8.

NOTICE OF DETERMINATION OF LEASE

A precedent for an Application for a Notice of Determination of Lease is on Page 11-9. The Land Registrar will treat this as an application to delete the entry of the Notice of Lease and any related Notice (e.g., Assignment) from the Register. If the Lease has not been terminated by a written agreement, the Land Registrar may, in his discretion, delete the Notice of Lease upon the affidavit of the Lessor deposing that the term of the Lease has been determined and that there is no occupation under it. In either case, if a notice of charge of lease has been registered, the Land Registrar will refuse the application unless satisfied that the term of the lease has expired, or unless the chargee consents to the application.

APPLICATION TO REGISTER  
NOTICE OF LEASE

THE LAND TITLES ACT SECTION 115

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

GEORGE IAN BROWN, of the Borough of York, in the Municipality of Metropolitan Toronto, being interested in the land entered in the Register for Section M-50 as Parcel No. 25-1, of which JOHN ALLAN SMITH is the registered owner, by reason of the Lease produced herewith, applies to you to register Notice of the Lease.

The address of GEORGE IAN BROWN for service is 200 Fairview Avenue, Toronto, Ontario

DATED at Toronto the first day of April, 1973.

"GEORGE IAN BROWN  
by his Solicitor  
John H. Pirie"

APPLICATION FOR LEASEHOLD PARCELTHE LAND TITLES ACT SECTION 42(6)

TO: THE LAND REGISTRAR FOR THE LAND TITLES DIVISION  
OF TORONTO AND YORK SOUTH (NO. 66)

I, GEORGE IAN BROWN

BEING entitled for my own benefit to a leasehold estate for a term of 50 years from the 1st day of January, 1975, in those parts of Lot 25 according to Plan M-50 registered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) designated as PARTS 1 and 2 on a Reference Plan deposited in the said office as 66R-432 and being Part of the lands in Parcel 25-1 in the Register for Section M-50, apply to be registered as owner of the leasehold land, and to have a leasehold parcel opened for the same.

The evidence in support of this application consists of an executed copy of the lease.

The address of the applicant for service is 100 Fleet Street,  
Toronto.

DATED at Toronto this 2nd day of January, 1977.

"GEORGE I. BROWN  
by his Solicitor  
L. D. RICHARDSON"

NOTE: This form is designed for use only where the freehold is registered under The Land Titles Act.

# The Land Titles Act

I, JOHN ALLAN SMITH

the registered owner of the ~~freehold~~ leasehold land registered in the Land Registry Office for the Land Titles Division of Toronto & York South (No. 66) as Parcel 25-1  
<sup>leasehold</sup>  
in the register for Section M-50

in consideration of the sum of -----

Ten Thousand-----(\$10,000.00)-----Dollars

paid to me TRANSFER to GEORGE IAN BROWN

of the Borough of North York in the Municipality of Metropolitan Toronto, my leasehold estate in

the land hereinafter particularly described namely

- \* in the City of Toronto, in the Municipality of Metropolitan Toronto and being all of Lot 25 on Plan M-50, being the whole of the Parcel for the residue of the term and all rights of renewal and other privileges contained therein.

\* NOTE: Where the instrument deals with the whole of the parcel the particular description may be omitted and the following substituted:

"the whole of the said parcel".

# The Land Titles Act

J, JOHN ALLAN SMITH

the registered owner <sup>leasehold</sup> of the land entered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) as Parcel 25-1 <sup>leasehold</sup> in the Register for Section M-50

In consideration of the sum of -----  
-----Eight Thousand-----(\$8,000.00)----- Dollars  
my leasehold estate in paid to me, charge the land hereinafter particularly described, namely,  
\* in the City of Toronto, in the Municipality of Metropolitan Toronto,  
and being all of Lot 25 on Plan M-50

being the whole of the said parcel with the payment to Samuel Bird of the City of Toronto in the Municipality of Metropolitan Toronto (hereinafter called the Mortgagee) of the principal sum of Eight Thousand (\$8,000.00) Dollars, etc.

\* NOTE: Where the instrument deals with the whole of the parcel the particular description may be omitted and the following substituted:

"the whole of the said parcel".

APPLICATION TO REGISTER  
NOTICE OF ASSIGNMENT OF LEASE

THE LAND TITLES ACT SECTION 115(7)(b)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, GEORGE IAN BROWN, being interested in the land entered in the Register for Section M-50 as Parcel 25-1 of which JOHN ALLAN SMITH is the registered owner hereby apply to have entered on the Register Notice of an Assignment of Lease dated the 4th day of March, 1973, wherein JOSEPH JAMES THOMAS assigned to me his interest in a lease, Notice of which is registered as No. 321654.

The evidence in support of this Application consists of an executed copy of the Assignment of Lease.

My address for service is:

52 Simcoe Avenue, Toronto, Ontario.

DATED at Toronto this 7th day of September, 1977.

"George Ian Brown  
by his Solicitor  
Timothy Q. Law"

NOTE: This form may be adapted for use as an Application to Register Notice of a Sublease or Notice of an Assignment of the Lessor's interest in a Lease (i.e., an assignment of rents).

APPLICATION TO REGISTER  
NOTICE OF CHARGE OF LEASE

THE LAND TITLES ACT SECTION 115(7)(c)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, DENNIS LONG, being interested in the land in the Register for Section M-50 as Parcel 25-1 of which JOHN ALLAN SMITH is the registered owner hereby apply to have entered on the Register Notice of a Charge of Lease, dated the 5th day of May, 1973, wherein the lessee, GEORGE IAN BROWN, charged to me his interest in a lease, Notice of which is registered as No. 321654.

The evidence in support of this Application consists of an executed copy of the Charge of Lease.

My address for service is:

1001 Delights Crescent, Toronto, Ontario

DATED at Toronto this 1st day of June, 1977.

"Dennis Long  
by his Solicitor  
Alexander R. Smart"

APPLICATION TO REGISTER  
NOTICE OF DETERMINATION OF A LEASE

THE LAND TITLES ACT SECTION 115(7)(e)

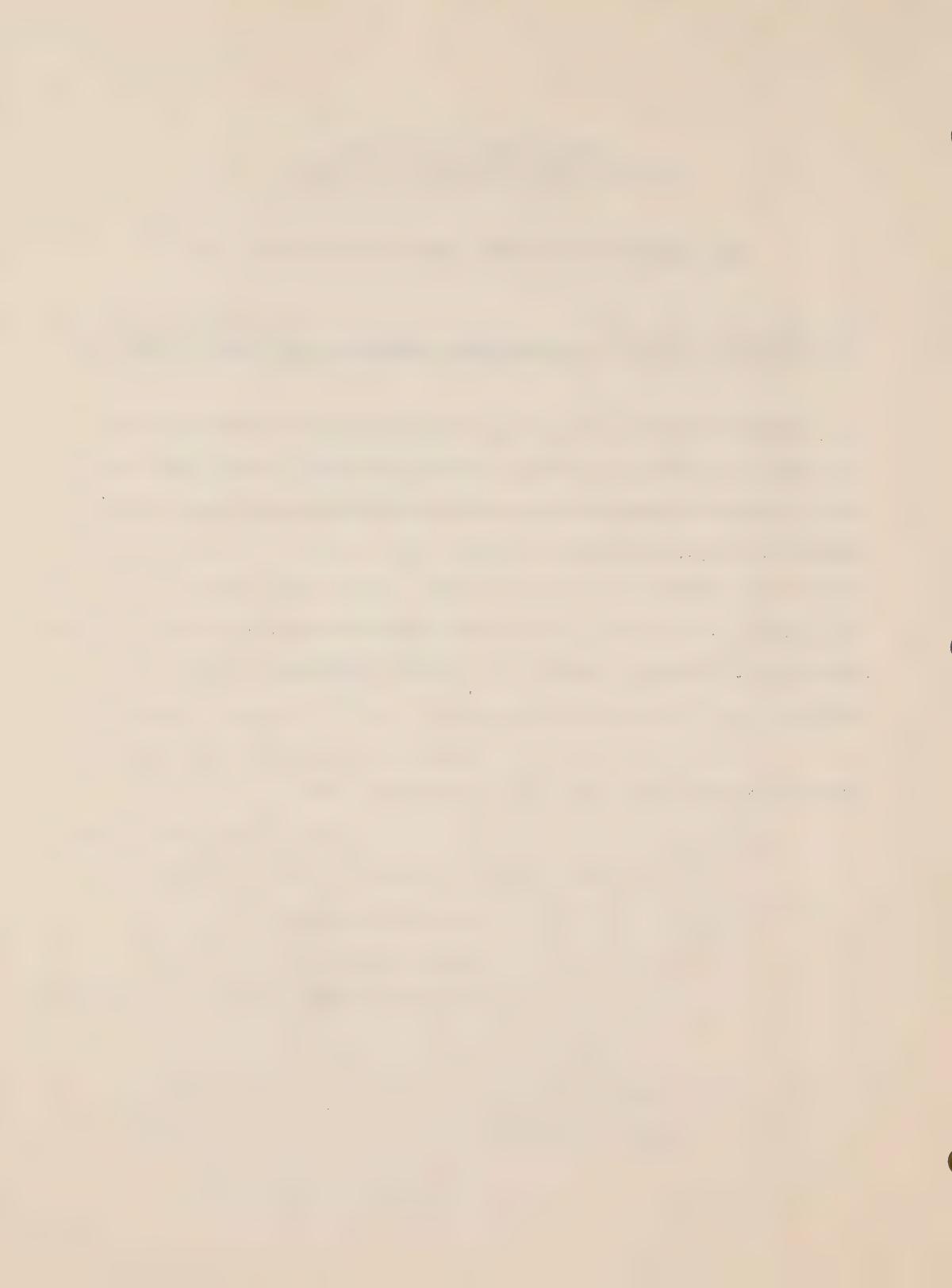
TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, GEORGE IAN BROWN, the registered owner of the land entered as Parcel 25-1 in the Register for Section M-50, hereby apply for registration of a Notice of Determination of the Lease of which Notice is registered as No. 48512.

The evidence in support of this Application consists of the Termination Agreement between the Lessor and Lessee attached hereto.

DATED at Toronto this 4th day of February, 1977.

"George Ian Brown  
by his Solicitor  
Timothy Q. Law"



## CHAPTER 12

### RESTRICTIVE COVENANTS AND RESTRICTIONS

#### APPLICATION TO ANNEX RESTRICTIVE COVENANTS TO LAND

An owner of land may by application, have registered in respect of his land or a specified part of it, any restrictive covenant running with or capable of being legally annexed to land. The prescribed form for the Application is given on Page 12-3. An Application is required only where restrictive covenants are registered separately: restrictive covenants contained in a Transfer will be registered without application upon payment of the prescribed fee in addition to the basic fee for registration of the Transfer. The registration of restrictive covenants does not of itself make them run with the land if, on account of their nature, or of the manner in which they are expressed, they would not otherwise do so. It should be noted that where covenants are contained in a transfer, the covenantor-transferee need not sign the transfer to assume the burden of the covenants.

#### BUILDING SCHEMES

Where a building scheme is being established (usually on a plan of subdivision) an Application may be made to annex the restrictions to all the land included in the building scheme. A notation of the restrictions will then be entered, without additional fee, on the Register for each lot as it is transferred.

#### MODIFICATION OR DISCHARGE OF RESTRICTIVE COVENANTS

Where a restrictive covenant has been registered as annexed to or running with land for a fixed period, the Land Registrar will, on application, remove the entry from the Register at any time after ten years from the expiration of the period. (See section 129(8)). Where no date is fixed for its expiry, a covenant may be deleted at any time after forty years from the date of its registration by making an Application under section 129(9).

The Court may order the modification or discharge of a restrictive covenant on proof to the satisfaction of the Court that the Order will benefit the persons principally interested in the enforcement of the covenant. (See section 129(5) and section 62 of The Conveyancing and Law of Property Act). The procedure is normally used where the original purpose for the covenant is no longer applicable due to lapse of time or a change in circumstances. The Application shown on Page 12-4 is used whenever covenants have expired either according to the instrument creating them or as a result of the

operation of The Land Titles Act. If the covenants have been discharged by Court Order, the covenants may be deleted from the Register upon an application to delete.

The Land Registrar may, in his discretion, delete an entry of a restrictive covenant upon application by the registered Owner where,

- (a) the instrument creating the restriction provides that it may be discharged with the concurrence of designated persons and those persons consent to the Application; or
- (b) every person entitled to the benefit of the restriction consents to the Application.

As mentioned, the Land Registrar has a discretionary power in the above described situation and he is therefore entitled to refuse an Application unless he is completely satisfied by the applicant that the covenant is no longer effective. The form of Application on Page 12-4 appropriately amended, may be used.

It should be noted that the Land Registrar has no authority to delete restrictive covenants from the Register except in those situations above noted.

#### APPLICATION TO REGISTER NOTICE OF COMPLIANCE

The form of Application on page 12-5 may be used when restrictions have been complied with by the owner.

#### RESTRICTIONS ON TRANSFERRING OR CHARGING LAND

Section 128(1) provides that the registered owner of land or a charge may impose restrictions on transferring or charging his land or charge by applying to the Land Registrar to make an entry on the register that no transfer shall be made or charge created unless certain conditions are met. For example, a developer may enter a restriction on his land requiring the consent of the municipality to any transfer or charge. A precedent for this Application appears on Page 12-6.

APPLICATION TO REGISTER RESTRICTIVE COVENANTSTHE LAND TITLES ACT SECTION 129

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

JOHN ALLAN SMITH, of the City of Toronto in the Municipality of Metropolitan Toronto, the registered owner of the land entered in the Register for Section M-50 as Parcel 25-1 in the Land Registry Office for the Land Titles Division of Toronto & York South (No. 66) requests the Land Registrar to register as annexed to the land the covenants, a copy of which is filed herewith.

DATED at Toronto this 6th day of October, 1968.

"John Allan Smith"

APPLICATION TO DELETE RESTRICTIVE COVENANTSTHE LAND TITLES ACT SECTION 129(8)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, GEORGE IAN BROWN, the registered owner of Parcel 25-1 in the Register for Section M-50 hereby apply to have the Register for the said Parcel amended by deleting therefrom the entry of the covenants in No. 789231, by reason of their expiration on June 9, 1966.

DATED at Toronto this 12th day of October, 1976.

"George Ian Brown  
by his Solicitor  
Timothy Q. Law"

APPLICATION TO REGISTER  
NOTICE OF COMPLIANCE

THE LAND TITLES ACT SECTION 78

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

XYZ DEVELOPMENTS COMPANY LIMITED,  
the registered owner of Parcel 25-1  
in the Register for Section M-50,  
hereby applies to have Notice of Compliance with  
restrictive covenants registered in Instrument  
No. 162534 entered on the parcel register.

The evidence in support of this Application consists of:

1. The letter of John T. Raine, owner of the lands  
benefitted by the restrictive covenants in  
Instrument No. 162534.

DATED at Toronto this 7th day of September, 1977.

"XYZ DEVELOPMENTS COMPANY LIMITED  
by its Solicitor  
Timothy Q. Law"

APPLICATION TO REGISTER RESTRICTION ON TRANSFERRING LANDTHE LAND TITLES ACT SECTION 128

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

RENFREW DEVELOPMENTS LIMITED, the registered owner of the land entered in the Register for Section M-50 as Parcel 25-1 requests you to register as annexed to the land the following restrictions:

No transfer of Lot 25 according to Plan M-50 shall be registered without the consent of the Clerk of the Corporation of the City of Toronto.

DATED at Toronto this 6th day of October, 1968.

RENFREW DEVELOPMENTS LIMITED (c/s)

per: \_\_\_\_\_  
JOHN D. JONES - President

per: \_\_\_\_\_  
ALEX FOSTER - Secretary

## CHAPTER 13

### EASEMENTS AND RIGHTS-OF-WAY

#### TRANSFER AND RESERVATION OF EASEMENTS, RIGHT-OF-WAY

Under The Land Titles Act, easements and rights-of-way may be created by a transfer, or by a reservation in a transfer of a freehold or leasehold interest. Where created by a transfer of easement, the prescribed form of Transfer should be modified as shown on Page 13-3 . An example of a transfer "together with" and "subject to" easements appears on page 1-7. Any instrument creating an easement or right-of-way for a period of 21 years or more will be refused if it is not accompanied by a consent issued under The Planning Act or an affidavit that the instrument is in compliance with the subdivision control or part lot control provisions of that Act.

Generally speaking, the land to be benefited by an easement must be adequately identified in the instrument creating the easement. In certain cases, however, utilities (e.g., Bell Canada) and municipal corporations, etc., may acquire easements without specifying the land to be benefited. These easements "in gross" may be accepted for registration under section 43(1)(a) of The Land Titles Act. Where an easement to Bell Canada or a municipal corporation, etc. names the head office as the lands to be benefited, the Land Registrar need not record the benefit of the easement in the register for the dominant parcel.

The precedent on Page 13-3 provides for execution by a prior Chargee. It is important to note that unless a prior Chargee postpones his Charge or gives a Cessation with respect to the easement or right-of-way, the easement or right-of-way will cease to exist on a foreclosure or sale under a Chargee's power of sale. Where a subdivider transfers an easement to a public utility, transfers of individual lots to purchasers are often registered before the Transfer of the easement is tendered for registration. Since the Transferor named in the Transfer of easement is no longer the registered owner, the title of the registered owner will not be made subject to the easement, and a Transfer by the new registered owner is required. However, if the new registered owner consents to the transfer of easement, the Land Registrar may, in his discretion, make the title subject to the easement.

#### RELEASE AND ABANDONMENT

A form that may be used to delete an easement or right-of-way from the parcel register appears on Page 13-4.

PROCEDURE WHERE THE SERVIENT AND DOMINANT LANDS  
ARE REGISTERED UNDER DIFFERENT ACTS

An easement in or over land registered under The Registry Act may, of course be conveyed as appurtenant to land registered under The Land Titles Act and an easement in or over land registered under The Land Titles Act may be transferred as appurtenant to land registered under The Registry Act. Solicitors should note that sections 43(2) and 43(3) of The Land Titles Act provide procedures for recording the existence of such easements on the dominant parcels.

# The Land Titles Act

J, COLLOSAL CONSOLIDATED DEVELOPMENTS COMPANY LIMITED

the registered owner of the freehold land registered in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) as Parcel 25-1  
in the register for Section M-50

in consideration of the sum of -----  
-----One Thousand-----(\$1,000.00)-----Dollars  
Dollars

paid to it TRANSFERS to  
The Corporation of the City of Toronto

of the ~~xx~~ in the ~~xx~~

~~the land hereinafter particularly described namely~~

a temporary easement to enter upon that part of Lot 25 according to Plan M-50 designated as Part 6 on Plan 66R-150, for the purposes of a turning circle until the street known as Rich Road is extended in a southwesterly direction from the southwesterly limit of Block H on Plan M-50, and that extension of the said street is assumed by the said Corporation as a public road,

NOTE:  
Appears  
above sig-  
natures  
AND, RELIABLE TRUST COMPANY, the registered owner of Charge 12345, hereby postpones and subordinates the said Charge to the easement herein created and transferred.

THE LAND TITLES ACTTO THE LAND REGISTRAR AT TORONTO AND YORK SOUTH (NO. 66)

BELL CANADA, (THE BELL TELEPHONE COMPANY OF CANADA)  
the registered owner of an easement over  
Parcel 25-1, in the Register for Section M-50,  
registered on June 2, 1976, as No. 69031  
in the Land Registry Office for the Land Titles Division  
of Toronto and York South (No. 66), hereby applies  
to have the Register for the said Parcel amended by  
deleting therefrom the said easement in No. 69031  
as to the following described lands namely: in the  
Town of Markham, in the Regional Municipality of  
York and being all of Lot 25 according to Plan M-50  
being the whole of the said parcel.

DATED at Toronto on the 30th day of October, 1977.

BELL CANADA

c/s

THE BELL TELEPHONE COMPANY OF CANADA

Per: \_\_\_\_\_  
Vice-PresidentPer: \_\_\_\_\_  
Assistant Secretary

CHAPTER 14PLANSREFERENCE PLANS

Section 167 of The Land Titles Act provides, in effect, that a Transfer or Charge is not to be accepted for registration unless the land affected is described by reference to a plan of survey known as a Reference Plan, certified by an Ontario Land Surveyor, except where the Transfer or Charge affects,

- (a) the whole of a registered parcel of land according to the Parcel Register (the remainder of a parcel is to be considered the whole of the parcel);
- (b) the whole of a lot, block, street, lane, reserve or common according to a registered Plan of Sub-division or composite plan; or
- (c) the whole of a PART according to a previously recorded Reference Plan.

The Land Registrar may, by his order under section 167(3), endorsed on or attached to the instrument, exempt a Transfer or Charge from the Reference Plan requirement. This discretion may be exercised for example, where the cost of the survey required for the plan is very high in relation to the value of the land.

The following are some examples of descriptions to be used in instruments in various situations where Reference Plans have been deposited:

1. Reference Plan over Township Lot

Those parts of Lot 10 in Concession IV of the Township of Tiny in the County of Simcoe, designated as PARTS 1 and 2 on Reference Plan 51R-600 deposited in the Land Registry Office for the Land Titles Division of Simcoe;

2. Reference Plan over Registry Subdivision Plan

In the Borough of East York in the Municipality of Metropolitan Toronto being those parts of Lot 506 according to Plan 3020 (East York) registered in the Land Registry Office for the Registry Division of Toronto Boroughs and York South, designated as PARTS 1, 2, 3 and 4 on Reference Plan 66R-265 deposited in the Land Registry Office for the Land Titles Division of Toronto and York South;

3. Reference Plan over Land Titles Subdivision Plan

In the Town of Markham in the Regional Municipality of York and being those parts of Lot 10<sup>4</sup> according to Plan M-300

Registered in the Land Registry Office for the Land Titles Division of Toronto and York South, designated as PARTS 1 and 2 on Reference Plan 66R-100 deposited in the said office;

4. Mutual Right-of-Way

Together with a right-of-way over that part of Lot 105 according to said Plan M-300, designated as PART 3 on said Reference Plan 66R-100; and

Subject to a right-of-way over that part of said Lot 104 on the said Plan M-300, designed as PART 2 on said Reference Plan 66R-100, for the purposes set out in Instrument Number 54321.

5. Property Subject to Public Utility Easement

In the City of Toronto in the Municipality of Metropolitan Toronto being those parts of Lot 10 according to Plan M-300 registered in the Land Registry Office for the Land Titles Division of Toronto and York South, designated as PARTS 5 and 6 on Reference Plan 66R-150 deposited in the said office.

SUBJECT TO an easement in favour of BELL CANADA, over the said PART 6 on Reference Plan 66R-150, for the purposes as set out in Instrument Number B-83695.

PLANS OF SUBDIVISION

Every Plan of Subdivision when submitted for registration shall be accompanied by a Plan Document (Form 8, O. Reg. 932/78) to which is attached:

(a) in the case of every corporate owner -

(i) an Owner's Certificate (Form 7, O. Reg. 932/78);

(ii) an affidavit of execution (Form 13, O. Reg. 932/78);

(b) in the case of every non-corporate owner -

(i) an affidavit of age (Form 11, O. Reg. 932/78);

(ii) an affidavit of spousal status (Form 12, O. Reg. 932/78) where a dedication of land is made in the owner's certificate;

If this affidavit indicates the owner has a spouse (and the spouse is not a co-owner), then the Land Registrar will show the title of the streets, street widenings and lanes as being subject to the rights of the spouse of the owner under Part III of The Family Law Reform Act, 1978, unless evidence that will entitle the Land Registrar to show the title of the streets, street widenings and lanes as free and

clear of the rights of the spouse of the owner accompanies or forms part of the affidavit.

- (iii) an affidavit of execution (Form 10, O. Reg. 932/78);
- (c) in the case of every corporate chargee -
  - (i) a consent (Form 9, O. Reg. 932/78)
- (d) in the case of every non-corporate chargee -
  - (i) a consent (Form 9, O. Reg. 932/78);
  - (ii) an affidavit of execution (Form 10, O. Reg. 932/78);
  - (iii) an affidavit of age (Form 11, O. Reg. 932/78).

For a completed example of a Plan Document by a corporate and non-corporate owner see pages 14-4 to 14-13.

Once the Plan is registered and lots have been transferred, a Transfer of an easement by the subdivider will not be recorded against the lots that have been transferred, because the subdivided is no longer the registered owner. (see Page 13-1.) In order to avoid having to obtain transfers from the individual lot owners, the Municipality may protect its interest in these unregistered transfers of easement by requiring the subdivider to place restrictions on the lots, under section 128 of The Land Titles Act, to prohibit transfers of the lots without the consent of the Municipality. (In this regard, see Page 12-2 under the heading "RESTRICTIONS", and the form on Page 12-6.) The current procedure under which an Inhibiting Order (under section 26 of the Act) is entered by the Land Registrar, at the request of the Municipality, will continue as an alternative.

#### REGISTRATION OF MUNICIPALITY AS OWNER OF STREETS

Once a Plan of subdivision is registered and a lot on the plan has been transferred or charged, the Land Registrar will open a parcel showing the municipal corporation as owner of the dedicated streets and will add the one-foot reserves to that parcel when they have been transferred to the municipality. The Land Registrar when opening the parcel will make it subject to all encumbrances registered against the land except charges, since only the chargees have consented to the registration of the plan.

Where no such parcel has been opened with respect to a previously registered plan, the Land Registrar will open a parcel for the dedicated streets, upon the application of the municipality to be entered as owner. One-foot reserves, that have been transferred to the municipality, may be consolidated with the streets in that parcel. Normally, the application will not be made until the municipality has passed a by-law assuming the streets. In this situation, the application will be accompanied by a certified copy of the by-law. A suggested form for this application appears on Page 14-14.

The above procedure does not apply in respect of subdivision plans in northern Ontario areas where there is no municipal organization.

PLAN DOCUMENT

In the matter of a plan of subdivision of Parcel 10-2,  
Section 51-3 - Tiny, being part of Lot 10 in Concession 3  
of the Township of Tiny in the County of Simcoe prepared  
by John H. Doe, an Ontario Land Surveyor, and dated the  
7th day of March, 1979.

In support of the registration of the above-mentioned plan  
of subdivision, the following are attached hereto:

1. Owner's Certificate of Careful Developments Company Limited.
2. Corporate Affidavit of Execution for Careful Developments Company Limited.
3. Affidavit of age for Robert Anderson, owner.
4. Affidavit of spousal status for Robert Anderson, owner.
5. Affidavit of execution for Robert Anderson, owner.
6. Consent of Rock Investments Limited, chargee.
7. Consent of Carl Trigg, chargee.
8. Affidavit of execution for Carl Trigg, chargee.
9. Affidavit of age for Carl Trigg, chargee.

OWNER'S CERTIFICATE - PLAN OF  
SUBDIVISION

---

This is to certify that:

1. Lots 1 to 100 both inclusive,  
Blocks A to G both inclusive,  
the streets, namely First Avenue, Madison Avenue,  
street widenings, namely Block H,  
lane, namely Block I  
and reserves, namely Blocks K and L  
have been laid out in accordance with our instructions.
  
2. The street and street widenings and lanes are hereby  
dedicated as public highways.

Dated the 7th day of March, 1979.

CAREFUL DEVELOPMENTS  
COMPANY LIMITED (c/s)

"CUTHBERT CAREFUL"  
President

"ARCHIBALD CAREFUL"  
Secretary

NOTE: The officers who signed the prescribed form of Owner's Certificate on the plan on behalf of the corporation must be the same persons as those signing the above form, required as part of the Plan Document. Two Certificates are required because the Certificate on the Plan cannot be sealed under the corporate seal. The Land Titles Act prohibits the use of seals on plans.

CORPORATE AFFIDAVIT OF EXECUTION

I, MAYNARD WISE, of the City of Barrie in the County of Simcoe, make oath and say:

That I am the Vice-President of CAREFUL DEVELOPMENTS CORPORATION LIMITED;

That CUTHBERT CAREFUL whose signature is affixed to the attached owner's certificate and plan to which it refers is the President of the said corporation, and ARCHIBALD CAREFUL whose signature is also affixed thereto is the Secretary thereof, and the seal affixed to the said certificate is the corporate seal of the said corporation.

That under the by-laws of the said corporation the said CUTHBERT CAREFUL and ARCHIBALD CAREFUL are empowered to execute on behalf of the corporation all deeds and other instruments requiring the seal of the said corporation.

\* That the said corporation is, I verily believe, one of the owners of the land laid out by the said plan.

SWORN before me at the      )  
City of Barrie in the      )  
County of Simcoe this      )                  "MAYNARD WISE"  
7th Day of March, 1979.      )

"G. TRUSTWORTHY"  
A Commissioner, etc.

\*NOTE: This paragraph should be amended where the corporation is the sole owner of the lands.

AFFIDAVIT OF AGE

In the matter of a plan of subdivision of  
part of Lot 10 in Concession 3 of the Township  
of Tiny in the County of Simcoe prepared by  
John H. Doe, an Ontario Land Surveyor, and  
dated March 7, 1979.

I, ROBERT ANDERSON, make oath and say that  
at the time of the execution of the owner's  
certificate in respect of the above-mentioned  
plan of subdivision I was of the full age of  
eighteen years.

SWORN before me at the )  
City of Barrie in the )  
County of Simcoe this )  
7th day of March, 1979. )  
)  
"G. TRUSTWORTHY"  
A Commissioner, etc.  
)  
"ROBERT ANDERSON"

AFFIDAVIT OF SPOUSAL STATUS

In the matter of a plan of subdivision of  
part of Lot 10 in Concession 3 of the Township  
of Tiny in the County of Simcoe prepared by  
John H. Doe, an Ontario Land Surveyor, and  
dated March 7, 1979.

I, ROBERT ANDERSON , of the City of Barrie  
in the County of Simcoe, make oath and say that  
when I executed the owner's certificate,

(a) I was not a spouse;

within the meaning of section 1(f) of *The Family  
Law Reform Act, 1978.*

SWORN before me at the )  
City of Barrie in the )  
County of Simcoe this ) "ROBERT ANDERSON"  
7th day of March, 1979. )

"G. TRUSTWORTHY"  
A Commissioner, etc.

AFFIDAVIT OF EXECUTION

In the matter of a plan of subdivision of part of Lot 10 in Concession 3 of the Township of Tiny in the County of Simcoe prepared by John H. Doe, an Ontario Land Surveyor, and dated March 7, 1979.

I, MARY R. SCOTT, of the City of Barrie in the County of Simcoe make oath and say:

I am a subscribing witness to the owner's certificate on the above-mentioned plan of subdivision and I was present and saw it executed at Barrie by Robert Anderson.

SWORN before me at the )  
City of Barrie in the )  
County of Simcoe this ) "MARY R. SCOTT"  
7th day of March, 1979. )

"G. TRUSTWORTHY"  
A Commissioner, etc.

CONSENT OF CHARGEES

In the matter of a plan of subdivision of part of Lot 10 in Concession 3 of the Township of Tiny in the County of Simcoe prepared by John H. Doe, an Ontario Land Surveyor, and dated March 7, 1979.

ROCK INVESTMENTS LIMITED, the chargee under a charge registered as No. 436241 hereby consent to the registration of a plan of subdivision dated the 7th day of March, 1979, prepared by John H. Doe, Ontario Land Surveyor.

Dated the 12th day of March, 1979.

ROCK INVESTMENTS LIMITED c/s

"MONTE ROCK"  
President

Note: Where the mortgage or charge does not affect all the lands included in the plan, the lots or blocks affected should be specifically set out in the Consent as follows:

The said Charge (mortgage) affects Lots 1 to 118, inclusive, Lot 121 to 124 inclusive, and Blocks "A", "B" and "D" as shown on the said Plan of Subdivision.

CONSENT OF CHARGEES

In the matter of a plan of subdivision of part of Lot 10 in Concession 3 of the Township of Tiny in the County of Simcoe prepared by John H. Doe, an Ontario Land Surveyor and dated March 7, 1979.

I, CARL TRIGG, of the City of Barrie in the County of Simcoe, the chargee under charge registered as No. 442121 hereby consent to the registration of a plan of subdivision dated the 7th day of March, 1979, prepared by John H. Doe, Ontario Land Surveyor.

Dated the 12th day of March, 1979.

"ANDREA THOMAS"  
Witness

"CARL TRIGG"

NOTE: When the mortgage or charge does not affect all the lands included in the plan, the lots or blocks affected should be specifically set out in the Consent as follows:

The said Charge (mortgage) affects Lots 1 to 118, inclusive, Lot 121 to 124 inclusive, and Blocks "A", "B" and "D" as shown on the said Plan of Subdivision.

AFFIDAVIT OF EXECUTION

In the matter of a plan of subdivision of part of Lot 10 in Concession 3 of the Township of Tiny in the County of Simcoe prepared by John H. Doe, an Ontario Land Surveyor, and dated March 7, 1979.

I, ANDREA THOMAS, of the City of Barrie in the County of Simcoe make oath and say:

I am a subscribing witness to the attached consent and I was present and saw it executed at Barrie by Carl Trigg.

SWORN before me at the )  
City of Barrie in the )  
County of Simcoe this ) "ANDREA THOMAS"  
7th day of March, 1979. )

"G. TRUSTWORTHY"  
A Commissioner, etc.

AFFIDAVIT OF AGE

In the matter of a plan of subdivision of  
part of Lot 10 in Concession 3 of the  
Township of Tiny in the County of Simcoe  
prepared by John H. Doe, an Ontario Land  
Surveyor, and dated March 7, 1979.

I, CARL TRIGG, make oath and say that  
at the time of the execution of the  
chargee's consent in respect of the above-  
mentioned plan of subdivision I was of the  
full age of eighteen years.

SWORN before me at the )  
City of Barrie in the )  
County of Simcoe this ) "CARL TRIGG"  
7th day of March, 1979. )

"G. TRUSTWORTHY"  
A Commissioner, etc.

APPLICATION BY MUNICIPALITY TO  
BE REGISTERED AS OWNER

THE LAND TITLES ACT SECTION 169

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

The Corporation of the City of Toronto to whom the streets on Plan M-50, registered as Part of Parcel Plan-1 in the Register for Section M-50, have been dedicated, hereby applies:-

- (1) To be entered as owner of the said streets and to have By-law No. 596 of the said Corporation registered on title, which assumes the said streets as public highways being:

| NAME OF STREET | LAND TITLES PLAN NO. |
|----------------|----------------------|
|----------------|----------------------|

---

|                        |      |
|------------------------|------|
| First Avenue, Broadway | M-50 |
|------------------------|------|

Boulevard, Block H, being  
a 27-foot street widening

- (2) To have the reserves, shown on Plan M-50, that are entered as Parcel One foot Reserves-1, Section M-50, consolidated in one parcel with the abovementioned streets.

The evidence in support of this application is a certified copy of By-law No. 596.

DATED this 16th day of May, 1977

"THE CORPORATION OF THE  
CITY OF TORONTO"

by its Solicitor

"TIMOTHY Q. LAW"

CHAPTER 15BANKRUPTCY

Section 71(2) of The Land Titles Act provides that a trustee under the Bankruptcy Act (Canada) may be registered as owner of the land of the bankrupt upon proof of his appointment satisfactory to the Land Registrar and may transfer that land upon proof of compliance with the Bankruptcy Act. Before he can sell or otherwise deal with the property of the bankrupt, an Application to enter the trustee as owner in the register is required, and may be made by the trustee himself or his solicitor. The Application must be supported by a certified copy of the Assignment or Receiving Order under which the trustee is empowered to deal with the bankrupt's assets. The form of the Application where a Receiving Order has been issued against the bankrupt is shown on Page 15-4; the same form, appropriately adapted, should be used when the bankrupt has made an Assignment. A trustee may register a Caution against the bankrupt's land to protect the interests of the creditors where he is not in a position to apply immediately to have himself registered as owner. (See section 52(3) of the Bankruptcy Act.) The Application to register the Caution must be supported by the Trustee's affidavit attesting to his appointment as trustee.

A Transfer by the Trustee after he has been entered as owner must, unless the Trustee is dealing with the bankrupt's assets by way of a Summary Administration, be accompanied by evidence that the majority of Inspectors appointed by the creditors under the provisions of the Bankruptcy Act consent to the sale. The inspectors may consent in writing, reciting that they form a majority; an affidavit by the Trustee, stating that a majority of the inspectors consented to the sale, is also acceptable. Where the Transfer is given by a Trustee who has been empowered to conduct a Summary Administration of the bankrupt's affairs, an affidavit by the Trustee is required reciting this fact together with a statement that no inspectors have been appointed and that the Trustee has received no directions from the creditors which would prohibit the transfer. If inspectors have been appointed, proof that a majority of them have consented to the transfer will be required.

Where a trustee in bankruptcy is being entered as owner, the Land Registrar will mark the trustee's title (as a separate entry) "Subject to the rights of the spouse of (name of bankrupt) under Part III of The Family Law Reform Act, 1978, if any" unless

- (a) the Assignment's filing date or Receiving Order's date is prior to March 31, 1978;
- (b) the bankrupt is a corporation or the bankruptcy is in respect of a deceased person;

- (c) the spouse of the bankrupt joins in or consents to the application;
- (d) a court order is obtained under section 44 of The Family Law Reform Act, 1978, authorizing the disposition or releasing the property as a matrimonial home; or
- (e) affidavit evidence is provided to the best knowledge and belief of the trustee setting out the reason why the notation is not applicable (e.g., the bankrupt was not a spouse as of the date of the Receiving Order, etc.)

The entry re spousal rights will continue on a transfer by the trustee unless the Land Registrar is satisfied that it should not continue.

If the Assignment is filed with the Official Receiver, or the Receiving Order is dated prior to March 31, 1978, and if the bankrupt was a male and died prior to March 31, 1978, the Land Registrar will be concerned with dower and not the provisions of The Family Law Reform Act, 1978. Accordingly, where the Assignment's filing date or the Receiving Order's date is prior to March 31, 1978, and where the bankrupt is a male, the Land Registrar will require evidence whether the bankrupt was alive or dead as of March 31, 1978. Additionally, if a Receiving Order or Assignment which is dated on or after March 31, 1978, is given with respect to a deceased male bankrupt, then the Land Registrar will want to know the date of death of the deceased. If it is before March 31, 1978, the Land Registrar will concern himself with dower rights. Where the Land Registrar is concerned with dower, the trustee's title will be marked "Subject to dower of the widow of (name of bankrupt), if any", unless

- (a) a release of dower accompanies the application;
- (b) a court order dispensing with dower is obtained; or
- (c) the Land Registrar is satisfied that dower is not applicable.

The entry re dower will continue on a transfer by the trustee unless the Land Registrar is satisfied that it should not continue.

The title of a purchaser from a Trustee in Bankruptcy will not be made subject to writs of execution filed against the bankrupt prior to the date of the Receiving Order is made or Assignment filed, since such claims will be paid from the proceeds of the sale of the bankrupt's assets. The purchaser will not be affected by writs filed after that date because once a Receiving Order has been made or Assignment filed, the bankrupt's property vests in the Trustee.

Where a bankrupt is discharged and subsequently acquires land, the title of a purchaser from the bankrupt will be made subject to writs of execution filed with the Land Registrar before the discharge unless the Land Registrar can be satisfied that the discharge is not conditional with respect to the bankrupt's after-acquired property and that the judgment on which the execution is based is not for a claim to which the bankrupt's assets remain liable after his discharge. The Bankruptcy Act provides that a discharge does not release the bankrupt from claims for alimony, maintenance, necessities of life, fraud, obtaining property by false pretenses, etc. The Land Registrar may accept the affidavit of the bankrupt's solicitor with respect to the status of the discharge and of the debt. The solicitor in his affidavit, must state that he has actual knowledge of the facts; a deposition stated to be based upon his belief is not acceptable.

Subsection 11 of section 12 of the Bankruptcy Act provides a procedure whereby the trustee can register a notice of disclaimer or quit claim in order to divest himself of his interest appearing on the parcel register. The disclaimer requires the permission of a majority of inspectors (if any). Proof of their permission may be by way of consent in writing of the inspectors reciting that they form a majority or by affidavit of the trustee stating that consent was obtained. The registration of a notice of disclaimer or quit claim operates as a discharge or release of any interest under a document previously registered by or on behalf of the trustee, with respect to the property referred to in the notice.

APPLICATION OF TRUSTEE IN BANKRUPTCY  
TO BE REGISTERED AS OWNER

THE LAND TITLES ACT SECTION 71(2)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, JOHN ALLAN SMITH, hereby apply to be entered as Owner of Parcel 25-1 in the Register for Section M-50, as Trustee in Bankruptcy of the Estate of GEORGE IAN BROWN, a bankrupt who carried on business in the City of Toronto under the firm name and style of CAREFREE DEVELOPMENTS.

The evidence in support of this application consists of:

1. Certified copy of Receiving Order made against GEORGE IAN BROWN.

The address of the applicant for service is:

90 Wednesday Lane  
Toronto, Ontario  
H6P 6L7.

DATED at Toronto this 16th day of October, 1977.

"JOHN ALLAN SMITH  
by his Solicitor  
NORMAN LAW"

## CHAPTER 16

### EXECUTIONS

A Writ or a Renewal of a Writ of Execution does not bind land registered under The Land Titles Act until a copy certified by the Sheriff has been received by the Land Registrar. (See section 153). The Sheriff will forward the required copy upon receipt of a request in writing with the appropriate fee from the execution creditor or his solicitor. A Writ is presumed to be spent six years after the date of issue (five years for Federal Court Writs) set out in the copy transmitted to the Land Registrar unless he has received a copy of a Renewal. The Writ will not continue to affect land registered under The Land Titles Act if the Writ is renewed only with the Sheriff.

The title of a registered owner is not subject to any Writ of Execution issued against him under a name different from that under which he is registered unless and until the execution creditor or his solicitor notifies the Land Registrar of the name under which the execution debtor is registered. (See section 153(6)). The usual practice is to apply to amend the Writ and to request the Sheriff to forward a copy of the amended Writ to the Land Registrar, but the Land Registrar may accept the affidavit of the execution creditor or his solicitor giving the name under which the execution debtor is registered.

The following entries on the register will be made expressly subject to any outstanding execution apparently against the registered owner:

- (a) Transfers of freehold land.
- (b) Transfers of easement.
- (c) Charges of freehold land (except charges taken back by the vendor as part of the purchase price. See Lang v. McMillan 1958 OWN 341.)
- (d) Application to have beneficiary registered as owner (any executions against the deceased owner will be entered).
- (e) Vesting Orders, foreclosures, sales under power of sale, and any other proceeding that "cuts out" the registered owner (unless the execution creditor's claim is also extinguished by the proceeding).
- (f) Survivorship Applications (See Page 17-2).

Where any of the above entries are made on the register, and the registered owner's name has been previously amended on the register, the Land Registrar will search executions against both the former and current names.

Other entries (e.g., Notice of Lease) may in fact be subject to prior executions against the registered owner although not noted on the register.

#### EXECUTIONS AGAINST SIMILAR OR IDENTICAL NAMES

Title will be made subject to any writ issued against a judgment debtor whose name is similar or identical to the name of the registered owner as it appears on the Register, unless the application or instrument is accompanied by an Affidavit in the form shown on Page 16-3, made by the registered owner or his solicitor deposing that the registered owner is not the person named in the writ. One of two or more registered owners cannot make the affidavit with respect to a co-owner. However, where the amount of the writ of execution is over \$2,500.00, and the Land Registrar considers the names of the judgment debtor and the registered owner sufficiently similar to warrant it, he may require either (a) a statutory declaration of the solicitor for the registered owner (in the form shown on Page 16-4) unequivocally declaring that his client is not the same person as the judgment debtor shown on the writ; or (b) a written acknowledgement by the judgment creditor or his solicitor indicating that the registered owner is not the same person as the judgment debtor named in the writ.

A judgment creditor may also release a specific property being dealt with even though the registered owner is the judgment debtor. A suggested form of release appears on Page 16-5.

The current policy as to the evidence required in respect of identical or similar names is subject to modification by the Director of Titles at any time.

#### APPLICATION TO DELETE EXECUTIONS

This Application (see the form on Page 16-6) is used when a Writ of Execution is already entered on the Parcel Register. For example, the parties to a transaction may agree to register subject to executions where it was not possible to produce the evidence required to register free of an execution on the date of closing. When the evidence is furnished, the vendor, purchaser or either of their solicitors are then in a position to make the Application.

AFFIDAVIT AS TO WRITS OF EXECUTIONTHE LAND TITLES ACT SECTION 154

IN THE MATTER OF Parcel 25-1 in the Register for Section M-50 AND IN THE MATTER OF certain Writs of Execution in the hands of the Sheriff of the Judicial District of York, copies of which have been filed in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) as Numbers 12623, 14561 and 15678;

I, GEORGE IAN BROWN , make oath and say as follows:

1. That I am the registered owner of the land entered as Parcel 25-1 Section M-50;
2. That I am not the same person as IAN G. BROWN, the judgment debtor named in Writ of Execution Number 12623, wherein ST. JAMES DOMESTIC SERVICE LIMITED as PLAINTIFF was awarded \$264.00 plus \$75.00 costs;
3. That I am not the same person as GEORGE IAN BROWN, the judgment debtor named in Writ of Execution Number 14561, wherein ROSS J. HOWARD as PLAINTIFF was awarded \$1,250.00 plus \$150.00 costs;
4. That I am not the same person as GEORGE BROWN, carrying on business as HI-LITE COLOUR TV RENTALS, the judgment debtor named in Writ of Execution Number 15678, wherein SUPERIOR ELECTRONIC LIMITED, as PLAINTIFF was awarded \$860.00 plus \$100.00 costs.

SWORN before me at the City )  
of Toronto in the Municipality )  
of Metropolitan Toronto this ) "GEORGE IAN BROWN"  
23rd day of October, 1977. )

"N.O. JONES"  
A Commissioner, etc.

STATUTORY DECLARATION AS TO WRITS OF EXECUTIONTHE LAND TITLES ACT SECTION 154

IN THE MATTER OF Parcel 25-1 in the Register for Section M-50 AND IN THE MATTER OF a certain Writ of Execution in the hands of the Sheriff of the Judicial District of York, a copy of which has been filed in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) as Number 14561.

I, JOHN LAWYER, solemnly declare that:

1. I am the solicitor for the registered owner, of the above-mentioned Parcel 25-1, GEORGE IAN BROWN;
2. The registered owner of the above-mentioned parcel, GEORGE IAN BROWN, is not the same person as GEORGE IAN BROWN, the judgment debtor named in Writ of Execution Number 14561, wherein ROSS J. HOWARD as PLAINTIFF was awarded \$3,250.00 plus \$250.00 costs;

AND I make this solemn Declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the )  
City of Toronto in the )  
Municipality of Metropolitan ) "JOHN LAWYER"  
Toronto this 9th day of )  
November, 1977. )  
  
"N.O. JONES"  
A Commissioner, etc.

NOTE: It is not sufficient for the solicitor to merely declare to "the best of his knowledge and belief".

RELEASE OF LAND  
FROM WRIT OF EXECUTION

THE LAND TITLES ACT

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, CARL H. MACDONNELL, the execution creditor named in Writ of Execution Number 46123 filed in the Land Registry Office for the Land Titles Division of Toronto and York South (No. 66) hereby release my interest under the said Writ in the land entered as Parcel 25-1 in the Register for Section M-50.

DATED at Toronto this 16th day of May, 1977.

CARL H. MACDONNELL

Witness

NOTE: An affidavit of subscribing witness is required.

APPLICATION TO AMEND THE REGISTER  
BY DELETING EXECUTIONS

THE LAND TITLES ACT SECTION 106(2)

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO AND YORK SOUTH (NO. 66)

I, JOHN ALLAN SMITH, one of the registered owners of  
Parcels 62-1 and 63-1 in the Register for Section M-50  
hereby apply to have the Register for the said Parcels  
amended by deleting the entry as to Execution Nos. 16105  
and 19122.

The evidence in support of this Application consists of  
the affidavit of GEORGE IAN BROWN. (See page 16-3 for  
precedent of affidavit).

DATED at Toronto this 22nd day of October, 1977.

"JOHN ALLAN SMITH  
by his Solicitor  
JOHN LAWYER"

## CHAPTER 17

### OTHER AMENDMENTS TO THE REGISTER

#### APPLICATION TO CONSOLIDATE PARCELS

The registered owner of land registered as more than one Parcel may apply to have the Parcels consolidated in the Parcel Register. The Parcels do not have to adjoin each other; in fact, parcels on different plans may be consolidated. Unless the application provides a new description for the consolidated parcels, the previous descriptions will be retained. An example of an application in which a new description is provided appears on Page 17-3. It should be pointed out that the Land Registrar may require a Reference Plan in respect of any application to consolidate parcels especially in cases where a part of a Parcel is being consolidated with the whole of another Parcel.

Where a transferee is already an owner of another parcel of land, the transferee or his solicitor may endorse a request on the transfer that the land included in the transfer be added to his other parcel of land. An additional fee is payable for the requested consolidation except where the current transfer affects only a part of the land entered as a parcel.

#### MECHANICS' LIENS

The provisions of The Mechanics' Lien Act with respect to time limitations on the registration of a claim for lien or a certificate of action are no longer enforced by the Land Registrars. As a result, an application to delete an entry of a claim for lien for failure to register a certificate of action within the prescribed time is no longer applicable. A claim for lien will, however, be deleted from the parcel register where no certificate of action is registered if the application to delete is accompanied by (i) a court order vacating the claim for lien; or (ii) a discharge by the lien claimant discharging his claim for lien. If a Certificate of Action has been registered and it is desired to delete the Claim for Lien and the Certificate of Action, the Land Registrar will require either (1) a Court Order vacating the claim for lien and the Certificate of Action; or (2) a discharge by the lien claimant discharging his claim for lien as well as his consent directed to the Land Registrar, to the vacation of the Certificate of Action. It should be noted however, with respect to item (2), that if there is any other claim for lien that is or may be "sheltering" under the Certificate of Action, then the Land Registrar will not delete the Certificate of Action, notwithstanding the consent of the party who registered the Certificate of Action to vacate it.

A Certificate of Action will not be accepted for registration where an order vacating the claim for lien has been issued and registered.

#### SURVIVORSHIP APPLICATION

Where one of two or more owners who hold land as joint tenants or one of two or more Chargees who own a Charge on joint account with right of survivorship or as joint tenants dies, any survivor may make an Application (see Pages 17-4, 17-5 and 17-6) to remove the name of the deceased owner from the Register, and may then proceed to deal with the land or charge as if he or they were the sole registered owner(s). The Application must be supported by (a) a consent under The Succession Duty Act if the death of the joint tenant occurred after December 31, 1949 and before April 11, 1978 (unless the sole survivor is the spouse of the deceased and evidence of this is included in the affidavit of the applicant); (b) a consent under the Estate Tax Act (Canada) if the death of the joint tenant occurred after December 31, 1958 and before January 1, 1972; (c) the affidavit of the applicant; (d) the affidavit of the applicant's solicitor; and (e) Letters Probate, Letters of Administration or a death certificate (issued by the Registrar General or by a Funeral Director) in respect of the deceased joint tenant. Where the deceased was one of three or more joint owners or chargees, the surviving owners or chargees will be entered in the register as joint tenants or as holding on joint account with right of survivorship as the case may be.

Where two or more owners of land or a Charge are described in the Register as trustees, Section 69(3) of The Land Titles Act provides that the land or Charge is vested in them as joint tenants unless the contrary is expressly stated. Accordingly, a Survivorship Application may be made by any survivor.

If there is a writ of execution filed against the deceased joint tenant, the Land Registrar must be satisfied in the affidavit of the applicant (Page 17-5) that the Sheriff has not advertised the lands for sale to enforce the Writ of Execution. This evidence is not required where the Land Registrar is satisfied that the death occurred before the expiration of one year from the filing of the Writ with the Sheriff.

APPLICATION TO CONSOLIDATE PARCELS

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

CLASSY BUILDERS COMPANY LIMITED, the registered owner of the land entered as Parcels 23-1, 24-1 and 25-1 in the Register for Section M-50, hereby applies to have the aforesaid land consolidated into one Parcel with the following description:

In the Town of Markham in the Regional Municipality of York and being all of Lots 23, 24 and 25 according to Plan M-50, registered in the Land Registry Office for the Land Titles Division of Toronto & York South (No. 66), designated as PARTS 1, 2, 3, 4, 5 and 6 on Reference Plan 66R-1001.

DATED at Toronto this 30th day of January, 1977.

"CLASSY BUILDERS COMPANY LIMITED  
by its Solicitor  
TIMOTHY Q. LAW"

APPLICATION TO REMOVE NAME  
OF DECEASED JOINT TENANT

THE LAND TITLES ACT SECTION 137

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

NORMA JEAN BROWN and GEORGE IAN BROWN, are the registered owners as joint tenants of the land registered as Parcel 25-1 in the Register for Section M-50.

GEORGE IAN BROWN died on the twelfth day of June, 1973;

NORMA JEAN BROWN, being entitled to the land by survivorship, hereby applies to have removed from the Register the name of GEORGE IAN BROWN, deceased joint tenant.

The evidence in support of this Application consists of:

1. the affidavit of the applicant;
2. the affidavit of the applicant's solicitor;
3. Death Certificate issued in respect of the death of George Ian Brown.

The address for service of NORMA JEAN BROWN is 800 Security Avenue, Toronto, Ontario.

DATED at Toronto the 3rd day of August, 1977.

"NORMA JEAN BROWN  
by her Solicitor  
TIMOTHY Q. LAW"

I, NORMA JEAN BROWN, of the City of Toronto, in the Municipality of Metropolitan Toronto, make oath and say:

1. That GEORGE IAN BROWN and I are the registered owners as joint tenants of the land registered as Parcel 25-1 in the Registrar for Section M-50;
2. That GEORGE IAN BROWN died on the twelfth day of June, 1973;
3. That I am entitled, by right of survivorship, to have the name of the deceased joint tenant, GEORGE IAN BROWN, removed from the Register;
- \*4. That the Sheriff of the Judicial District of York has not pursuant to Writ of Execution No. 17640, in which GEORGE IAN BROWN is the execution debtor, advertised the land registered as Parcel 25-1, Section M-50, for sale to enforce the said Writ of Execution;
- \*\*5. That GEORGE IAN BROWN and I were spouses of each other when the said GEORGE IAN BROWN died.

SWORN before me at the City of )  
Toronto in the Municipality of )  
Metropolitan Toronto this 3rd ) "NORMA JEAN BROWN"  
day of August, 1977 )

"† .M. WISE"

A Commissioner, etc.

NOTE: \* Paragraph 4 is required only in limited situations -  
See last paragraph on Page 17-2.

\*\* This optional paragraph is required to avoid a Succession Duty consent for the deceased joint tenant, if such a consent would otherwise be necessary.

I, SAMUEL LAW, make oath and say:

1. I am solicitor for NORMA JEAN BROWN  
the applicant herein.
2. I have read over the attached application and  
verily believe that the statements contained  
therein are true.

SWORN before me at the )  
City of Toronto in the )  
Municipality of Metropolitan )  
Toronto this 3rd day of ) "SAMUEL LAW"  
August, 1977. )

"I.M. WISE"  
A Commissioner, etc.

CHAPTER 18DEVOLUTION OF ESTATESTESTACY

In the land titles system, the predominant practice on a testacy is for the executor to make a transmission application to have the title registered in his name. A precedent for this application appears on page 18-13. The application must be supported by a notarial copy of letters probate (for exceptions to this requirement, see "Waiver of Letters Probate" on page 18-3), a consent of the Treasurer under The Succession Duty Act where the death occurred after December 31, 1949 and before April 11, 1979, a consent of the Minister of National Revenue under the Estate Tax Act (Canada) where the death occurred after December 31, 1958, and before January 1, 1972, and an affidavit of the applicant as to the marital status of the deceased if the deceased was male and died prior to March 31, 1978. (See "Dower" below on pages 18-1 and 18-2).

A transmission application by the executor is not required in the case where the property has vested in the beneficiary pursuant to Section 14 of The Devolution of Estates Act. In this situation, the beneficiary may apply directly to the Land Registrar to be entered as owner as set out in the precedent on pages 18-15 and 18-16. It should be noted, however, that if the provisions of the will provide for an express or implied power of sale, then vesting will be prevented at the end of the three-year period (as long as an express or implied power of sale continues to exist) and an application on page 18-13 will be required. Vesting can also be prevented by the personal representative if he registers himself as owner, as executor within such period of time as the property is vested in him. He may also prevent vesting within the three-year period by registering a caution under Section 14 of The Devolution of Estates Act. The caution which appears as Form 1 in The Devolution of Estates Act and which must be verified by an affidavit of subscribing witness extends the vesting in the personal representative for three years from the registration of the caution. This additional three-year period can be further extended by re-registering the caution. If the original or a subsequent three-year period expires without a caution being registered or re-registered with the result that vesting takes place (provided there is no express or implied power of sale in the will and that the personal representative has not registered himself as owner), then the property can only be re-vested in the personal representative with the consent of all beneficiaries having an interest in the land or pursuant to an order of a judge.

DOWER

As a result of The Family Law Reform Act, 1978, the question of dower has been limited to estates where the owner dies prior to March 31, 1978. If the death occurred on or after March 31,

1978, dower is not applicable.

A husband cannot, by his will, defeat his wife's right to dower. At best, he can put her into a position whereby she is required to elect between the benefits provided in the will and dower. This may be done by the testator expressly stating that the benefits of the will are to be accepted by the wife in lieu of any right to dower. If no such provision exists, then it becomes a matter of construction of the will as to whether there is an implied intention by the testator that the wife should be put to an election. If the disposition of the property in the will is inconsistent with the widow's right to dower (e.g., the land is to be divided equally between wife and child, or the wife is entitled to a life estate), then an election is required. The election, if required, may be made before, on or after the 31st day of March, 1978, and there are no formalities required for signifying the widow's election. If the wife has not expressly or impliedly been put to an election, then she is entitled to both her dower rights and the benefits provided for her under the will.

#### INTESTACY

As in a testacy, the predominant practice for an intestacy is to have the administrator make a transmission application to have the title registered in his name. A precedent for this application appears on pages 18-18 and 18-19. The application must be supported by a notarial copy of the letters of administration, a consent of the Treasurer under The Succession Duty Act where the death occurred after December 31, 1949 and before April 11, 1979, a consent of the Minister of National Revenue under the Estate Tax Act (Canada) where the death occurred after December 31, 1958, and before January 1, 1972, an affidavit of the applicant, and in some cases the election of the widow of the deceased to take her interest in her husband's undisposed of real property in lieu of dower. (See "Dower" below on page 18-2).

Where the property has vested in the beneficiaries under The Devolution of Estates Act, the beneficiaries may apply to the Land Registrar to be entered as owners as set out in the precedent on pages 18-20 and 18-21. Vesting may be prevented, however, by the registration of the administrator, as owner within such period of time as the property is vested in him or by the registration of a caution by the administrator as set out in paragraph 2 on page 18-1.

#### DOWER

As in the testacy situation, dower is limited to estates where the death occurred prior to March 31, 1978. With respect to an intestacy, a widow's right to dower is expressly preserved by Section 8(1) of The Devolution of Estates Act. The widow normally loses her dower only by voluntarily making an election by deed or instrument in writing attested by at least one witness to take her interest in her husband's undisposed of real property in lieu

of dower. If the widow is incapable of making an election because her dower rights have ceased to exist (e.g., adultery, death of the widow), then she has no interest in her husband's real property; her rights being determined as if she had failed to make an election.

#### DEVOLUTION OF EXECUTORSHIP

Some confusion may arise as to who is entitled to be registered as owner when an executor or administrator dies without having completed the administration of the estate. Section 46(1) of The Trustee Act provides that where there are several personal representatives and one or more of them dies, the power conferred upon them shall vest in the survivor or survivors, unless there is some provision to the contrary in the will.

Where there is only one executor or administrator appointed or surviving, the devolution is generally as follows:

##### Testacy

If the deceased executor has proved the will of the deceased registered owner, then the executorship of the original testator will devolve to the executor of the deceased executor if the deceased executor's executor proves the deceased executor's will. The transmission of an executorship in this manner may descent indefinitely so long as the chain is not broken by the appointment of an administrator. If the testator's executor, on the other hand, dies intestate or without having an executor to prove his will, then the beneficiaries under the will may nominate any person to make application for a grant of administration de bonis non administratis with will annexed to complete the administration of the estate.

Where an "administrator with will annexed" has been appointed to administer an estate and dies leaving part of the estate un-administered, an administrator de bonis non administratis with will annexed is required.

##### Intestacy

Where an administrator who has been appointed upon an intestacy dies leaving part of the assets of the estate unadministered, the grant is a grant of letters of administration de bonis non administratis.

#### WAIVER OF LETTERS PROBATE

Where the total value of the estate of a deceased registered owner is less than \$15,000, the requirement for letters probate may be waived by the Land Registrar. When accepting a transmission

application without letters probate, the Land Registrar, as part of the application, will require the following:

1. The Will or a notarial copy thereof. (The Land Registrars will satisfy themselves that the will is valid as regards manner and formalities according to Ontario law. See pages 18-4 and 18-5.)
2. A death certificate;
3. Affidavit evidence that the value of the estate of the deceased owner is not more than \$15,000;
4. Affidavit evidence that the testator was of the age of majority at the time of execution of the will and that to the best knowledge and belief the will has not been revoked by the marriage of the testator or otherwise. (This particular evidence may be qualified, e.g., the testator may have been a member of the armed forces at the time of the execution of the will and, therefore, did not have to be of "legal age" to execute a valid will);
5. Affidavit evidence that letters probate was not applied for and to the best knowledge and belief of the applicant, the will attached to the application is the last will and testament of the deceased registered owner;
6. A bond or covenant to indemnify the Land Titles Assurance Fund. The covenant when used may be accepted from those beneficially entitled under the will.
7. In the case of a foreign will which is valid as regards manner and formalities because of Section 37 of The Succession Law Reform Act, 1977, a statement of compliance re Section 37.

Where, on a testacy, property has vested in the beneficiaries three years from the date of death of the deceased under Section 14 of The Devolution of Estates Act, the application will be accepted without letters probate regardless of the value of the estate of the deceased provided items 1, 2, 4, 5, 6, and 7 (if applicable) noted above, are included in the application. (See pages 18-15 and 18-16 for precedent application.)

In conjunction with the waiver of letters probate, Land Registrars are advised that holograph wills (i.e., handwritten, without formality and without the presence, attestation or signature of a witness) are to be considered as valid wills where the testator had died on or after March 31, 1978. In addition, Ontario law recognizes international wills if made and executed in the proper manner (see Section 42 of The Succession

Law Reform Act, 1977, for particulars) regardless of where the will was made or the nationality of the person making it. The effective date for the recognition of the international will was September 15, 1978. Foreign wills are also acceptable in the land titles system provided the will is valid as regards manner and formalities according to Ontario law. If the deceased died prior to March 31, 1978, in order to be valid in Ontario, the foreign will must be in conformity with Ontario law as it then was (i.e., two witnesses signing in the presence of each other and the testator). If the deceased died on or after March 31, 1978, the foreign will as regards manner and formalities will validly affect land in Ontario if it is in conformity with Ontario law (i.e., The Succession Law Reform Act, 1977); e.g., if at the time of its making, it complied with the internal law of the place where (a) the will was made; (b) the testator was then domiciled; (c) the testator then had his habitual residence; or (d) the testator then was a national, if there was in that place one body of law governing the will of nationals (see Section 37 of The Succession Law Reform Act, 1977). Evidence of compliance with Section 37 must be provided to the Land Registrar by way of affidavit before such a foreign will will be accepted without probate.

The \$15,000 figure can also be adopted in the case of foreign probate (or other grant in the case of a testacy). In other words, foreign probate may be accepted without re-sealing, etc., if the Land Registrar is satisfied that (a) the value of the estate of the deceased is less than \$15,000; (b) the will is a valid will i.e., age of majority of testator and non-revocation by marriage or otherwise); and (c) the will as regards manner and formalities is in conformity with the law of Ontario. (See the above paragraph.) An affidavit by the applicant that the will is the last will and testament of the deceased, a bond or covenant to indemnify the Land Titles Assurance Fund and a death certificate are not necessary where a transmission application supported by foreign probate is presented for registration.

The above related to foreign probate does not apply where the deceased died intestate and an administrator has been appointed by a foreign court. In order for such an administrator to be entered as owner, there must be ancillary letters of administration or re-sealing of letters of administration by the Ontario Surrogate Court. Foreign letters of administration (or other grant in case of intestacy) will not be accepted as the basis of a transmission application regardless of the value of the estate of the deceased.

Where on an intestacy, property has vested in the beneficiaries under the provisions of The Devolution of Estates Act, the application will be accepted without letters of administration regardless of the value of the estate. (See pages 18-20 and 18-21 for precedent.)

#### CONVEYANCING BY THE PERSONAL REPRESENTATIVE

Once the property is registered in the name of the personal representative, we must consider the personal representative's power

to transfer the real property of the deceased and whether title to the property will be free from debts.

#### Testacy

A personal representative under a will may have certain powers of sale and conveyance granted to him in the will itself. An express power of sale is granted to the personal representative, for example, where the deceased gives his personal representative a power to sell the real property at such times and in such manner as he sees fit. Where such a power exists in a will, a personal representative can sell without the consent of the beneficiaries, and a purchaser in good faith and for value will take free from debts. However, in order to be shown on the parcel register free and clear of debts, affidavit evidence must accompany the conveyance stating that the sale is bona fide and for value. If the will directs the personal representative to pay his debts or any legacy or other specific sum of money, but does not make any express provision for the raising of money, then the personal representative has an implied power of sale. Where an implied power of sale is being exercised, a bona fide purchaser for value will take free from debts. Affidavit evidence stating that the sale is bona fide and for value must accompany the conveyance. The sale may also be exercised without the consent of any of the beneficiaries. If the implied power of sale is exercised for the purpose of paying debts, an affidavit of spousal status is required from the personal representative. If the Land Registrar is unable to determine the purpose for which the implied power of sale is being exercised (i.e., for debts or the payment of a legacy), he is entitled to be so satisfied in order to determine whether a spousal status affidavit is required from the personal representative.

If evidence that the creditors of the deceased have been notified and that the debts of the deceased have been paid accompanied the transmission application, or accompany the transfer, then the above evidence re debts is not required.

If the will does not contain a power of sale, then the personal representative can resort to the powers of sale under The Devolution of Estates Act (see "Intestacy" below) provided that they do not conflict with the provisions of the will.

#### Release of Interests by a Beneficiary

Where a beneficiary under a will releases his interest in property being conveyed by the personal representative, solicitors must ensure that a Planning Act consent is attached or that an affidavit of compliance under The Planning Act is completed by both the personal representative and the beneficiary

who is releasing his interest, or their solicitors. If the beneficiary under the will, however, is releasing his interest to a person who would have been entitled to the property had the releasing beneficiary disclaimed his interest under the will, then a Planning Act affidavit will not be required from the releasing beneficiary provided affidavit evidence that: (1) the release is equivalent to a valid disclaimer; and (2) the disclaimed interest in the property is being conveyed to the beneficiary entitled as a result of the disclaimer, accompanies the transfer. An affidavit of legal age and spousal status will also be required by the Land Registrar in respect of each beneficiary under a will who releases an interest in property being conveyed by the personal representative.

The transferee from a personal representative where a beneficiary under a will releases his interest will take "subject to debts" unless the Land Registrar is satisfied the creditors of the deceased have been notified and all debts have been paid.

#### Intestacy

The powers of sale and conveyance under The Devolution of Estates Act are the only powers which are available to an administrator in the case of an intestacy. The first of these powers is the power to sell the real property of the deceased for the purpose of paying his debts. A sale of this kind, by the administrator, does not require the consent of any of the beneficiaries and a purchaser in good faith and for value will take free and clear and debts. As in previous cases, affidavit evidence must accompany the conveyance stating that the sale is bona fide and for value, as well as stating that the sale is necessary for the purpose of paying debts. An affidavit of spousal status for the personal representative is required where the sale is for the purpose of paying debts.

The second power of sale for which provision is made in The Devolution of Estates Act is a sale for the purpose of distributing the proceeds amongst the persons beneficially entitled. Such a sale requires the concurrence of a majority of the persons beneficially entitled and that such majority represents together not less than one-half of all the interests in the estate of the deceased. If there are any infants interested in the real property, the approval of the Official Guardian is essential, even if the adults who approved of the sale constituted a majority of those beneficially entitled and represent together more than one-half of the interests in the estate. The Official Guardian is also authorized to approve a sale for the distribution of proceeds on behalf of mentally incompetent persons, persons whose concurrence is not obtained because their place of residence is unknown and persons whose concurrence the Official Guardian considers it would be inconvenient to require (see Section 22(2) of The Devolution of Estates Act).

A transfer by the personal representative for a sale of this type must be accompanied by an affidavit by the personal representative stating: (1) that the sale is for the purpose of distributing the proceeds amongst the beneficiaries; (2) that the beneficiaries whose

approvals are endorsed on or attached to the transfer constitute a majority of those beneficially entitled and that they represent together not less than one-half of all the interests in the estate; (an approval other than by the Official Guardian must be supported by an affidavit of subscribing witness); (3) that no infants are beneficially interested in the property (or if infants are interested, naming them specifically); and (4) that the sale is bona fide and for value. (If this statement is not provided, the title of the purchaser will be shown "subject to debts" of the deceased.)

An affidavit of legal age and spousal status is required in respect of each approving beneficiary except those whose approval is granted by the Official Guardian.

The Devolution of Estates Act also makes provision for a conveyance by the personal representative for the purpose of distributing or dividing the real property in specie to or amongst the persons beneficially entitled. This may be done with or without a court order.

#### Without a Court Order

A personal representative has power to convey the real property to the persons beneficially entitled with the concurrence of all the adult persons so entitled and the written approval of the Official Guardian on behalf of infants or mentally incompetent persons so entitled. An approval, other than by the Official Guardian must be supported by the affidavit of a subscribing witness. Property distributed in specie without a court order remains subject to the debts of the estate of the deceased unless the Land Registrar is satisfied the creditors of the deceased have been notified and that all debts have been paid. If the persons beneficially entitled having taken "subject to debts" convey to a purchaser within the three-year period from the death of the deceased, and the purchaser buys in good faith and for value, then that purchaser is subject to the debts only for the remainder of the three-year period unless legal proceedings have been instituted to enforce a claim and a caution has been registered against the land before the expiration of the three-year period. (See section 22(8)(a) of The Devolution of Estates Act.) If the conveyance to the bona fide purchaser for value takes place after the three-year period and no caution has been registered, the reference to debts will be deleted if the Land Registrar is satisfied by affidavit evidence that the conveyance has, in fact, taken place after the three-year period and that the purchaser has purchased in good faith, for value and without any notice of any debts at the time of his purchase. An affidavit of age and spousal status is required with respect to each concurring beneficiary except: (1) a beneficiary who is a transferee in the conveyance; and (2) a beneficiary whose approval is granted by the Official Guardian.

### With a Court Order

Where the real property is divided in specie by the personal representative under a court order, the property remains subject to the debts of the estate unless the court order provides otherwise or unless the Land Registrar is satisfied that the creditors of the deceased have been notified and all debts have been paid. Where the property is "subject to debts", a subsequent bona fide purchaser for value from the persons beneficially entitled will acquire the land free from debts. In this regard, an affidavit must accompany the transfer stating that the sale is bona fide and for value and that the transferor, who was beneficially entitled to the land, received it from the personal representative of the deceased by leave of the court.

If evidence that the creditors of the deceased have been notified and that the debts of the deceased have been paid accompanied the transmission application, or accompanies the transfer from the administrator, then any above evidence re debts is not required.

### Beneficiaries and Debts - Other Situations

Where the property becomes vested in a beneficiary under a will (whether under The Devolution of Estates Act, or under a transfer from the personal representative), or on an intestacy under The Devolution of Estates Act, the beneficiary will take "subject to debt" unless the Land Registrar is satisfied that the creditors of the deceased have been notified and all debts have been paid.

Where a beneficiary under a will has acquired title from the personal representative "subject to debts", a purchaser from that beneficiary will also take "subject to debts" unless affidavit evidence satisfactory to the Land Registrar accompanies the conveyance stating that the creditors of the deceased have been notified and all debts have been paid.

Where property has vested in a beneficiary under The Devolution of Estates Act and he has been registered as owner "subject to debts", a sale by that beneficiary to a purchaser in good faith and for value will be shown free from debts if affidavit evidence stating: (1) that the property has vested in the transferor-beneficiary under Section 14 of The Devolution of Estates Act; (2) that the sale is bona fide and for value; and (3) that the purchaser had no notice of any debts at the time of his purchase, accompanies the transfer.

A notation that the title to a parcel of land is "subject to debts" may be deleted from the parcel register upon application by the registered owner 40 years after the date of death of the deceased. Upon accepting such an application, the Land Registrar will search for executions against the name of the

deceased person who is subject to debts. If there are any executions against the deceased or the estate of the deceased the application must be refused. Generally speaking, if any executions are in existence, they will be against the "estate" of the deceased. There is a possibility, however, that an execution against the deceased personally may exist. For this to occur, the writ of execution would have to have been renewed on several occasions.

#### EXECUTIONS

A transfer by the personal representative to those beneficially entitled or to a third party will be marked subject to any executions against the deceased registered owner. Executions against the deceased registered owner will also be marked against the title of those beneficially entitled where they are entered as owners upon the property vesting in them under The Devolution of Estates Act.

The Land Registrar will additionally search executions against any beneficiary under a will who releases his interest in the property being conveyed by the personal representative unless the release is equivalent to a valid disclaimer. (See pages 18-6 and 18-7).

#### COMPLEX TRANSMISSION APPLICATIONS

Situations often arise whereby beneficial interests in property have passed from generation to generation but no actual change has taken place on the parcel register. For instance, Ronald Doe, the great-great-grandchild of John Doe, who died in 1905, may be beneficially entitled to certain property still registered in the name of John Doe. In these situations, Section 87 of The Land Titles Act becomes relevant. Section 87 of the said Act will allow:

1. The person who is presently legally entitled to the property to make application to be registered as owner provided that his legal entitlement is by reason of the property vesting in him under Section 14 of The Devolution of Estates Act; or
2. The personal representative of the last deceased beneficiary to make application to be registered as owner.

Such an application must be supported by the same evidence which would have been necessary had a separate application been presented for each death involved (i.e., for each death, letters probate or letters of administration, succession duty consents, estate tax consents, death certificates, affidavits as to persons beneficially entitled, elections as to dower, transfers, etc., as the case may be). If a solicitor is in doubt as to the form or content of a complex transmission application, he should discuss the matter initially with the Land Registrar where the land in question is located.

### Executions

The Land Registrar will be required to search executions against each person who died as owner of the property (save and except the last deceased beneficiary if the application has been made by his personal representative). However, in these complex applications, the Land Registrar will, as to each deceased person, be concerned only with executions which were filed before the date of death of the deceased or within three years after the date of death of the deceased. In addition, the Land Registrar will search executions against any beneficiary under a will who has released his interest in the property unless the release is equivalent to a valid disclaimer (see pages 18-6 and 18-7). With respect to these persons, the Land Registrar will be concerned only with executions filed prior to the date of the release.

An affidavit by the applicant stating that, to the best of his knowledge, the prior deceased owner and the person named in the execution are not the same person will be sufficient to show the title of the applicant free from any writ of execution with a similar or identical name if the value of the execution is \$2,500.00 or less. In this regard, the affidavit on page 16-3 appropriately amended should be followed. If the execution is \$2,500.00 or more, a written acknowledgement by the judgement creditor or his solicitor indicating that the prior deceased owner is not the same person as the judgement debtor named in the writ is required.

### Debts

The Land Registrar will also be concerned about the debts against the estate of each person who died as owner of the property within the last 40 years. In this regard, the Land Registrar will require affidavit evidence with respect to each such person who was alive within a 40-year period preceding the date of the application, that the creditors of the deceased have been notified and all debts have been paid. If the personal representative of the last deceased beneficiary has made the application, evidence as to the debts of the last deceased beneficiary may be provided on a subsequent dealing by the personal representative.

### Waiver of Probate

Since a complex transmission application involves the succession of property through several estates, the value of the estate of the deceased in determining whether letters probate can be waived is not totally appropriate. In such applications, the Land Registrar may waive letters probate with respect to any prior estate, if the present value of the land in question is less than \$15,000.00 Accordingly, the evidence required on page

18-4 when letters of probate are waived may be amended so that item 3 refers to the value of the land under application rather than the value of the estate of the deceased owner. All other evidence is to remain the same.

If the applicant is unable to provide the Land Registrar with all the evidence necessary to have the property registered in the applicant's name, an application to the court to rectify the register under Section 178 or 179 of The Land Titles Act will be required.

APPLICATION TO BE REGISTERED  
AS OWNER, AS EXECUTOR

THE LAND TITLES ACT

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO.66)

I, Charles E. Parker,  
the executor of the estate of  
William Bernard Mcklyo,  
apply to be registered as owner, as executor,  
of the land entered as Parcel 25-1  
in the Register for Section M-50.

The evidence in support of this Application consists of:

1. Notarial copy of letters probate of William Bernard Mcklyo;
2. Consent of the Treasurer under The Succession Duty Act (*if applicable*);
3. Consent of the Minister of National Revenue under the Estate Tax Act (Canada) (*if applicable*);
- \*4. The affidavit of the applicant (*if applicable*).

The address for service of Charles E. Parker is 210 Greenwood Avenue, Toronto, Ontario.

DATED at Toronto this 1st day of August, 1980.

"Charles E. Parker  
by his Solicitor  
M.S. Amos"

\*NOTE: If the deceased was a male and died prior to March 31, 1978, the executor must provide an affidavit as to the marital status of the deceased at the time of his death. If he was married and his widow has been put to an election between dower and the benefits provided in the will, then the affidavit of the applicant must also include a statement as to the election made, unless a separate election by the widow forms part of the application. Where the Land Registrar is unable to determine from the name of the deceased registered owner whether the deceased was male or female (e.g., Beverley, Lee, Robin, etc.), he should be satisfied by affidavit evidence of the applicant as to the sex of the deceased.

The affidavit of the applicant may also indicate that the creditors of the deceased have been notified and that all debts of the deceased have been paid. If this evidence is provided in the transmission application, the Land Registrar will not require any further evidence re debts in any subsequent transaction.

APPLICATION TO BE REGISTERED  
AS OWNER

THE LAND TITLES ACT

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, Dennis Long,  
the beneficiary under the last  
will and testament of  
Philip Long,  
apply to be registered as owner  
of the land entered as Parcel 25-1  
in the Register for Section M-50.

The evidence in support of this Application consists of:

- \*1. Notarial copy of letters probate of  
Philip Long;
2. Consent of the Treasurer under The Succession  
Duty Act (*if applicable*);
3. Consent of the Minister of National Revenue  
under the Estate Tax Act (Canada) (*if  
applicable*);
4. The affidavit of the applicant.

The address for service of Dennis Long is 78 Pinewood Avenue,  
Toronto, Ontario.

DATED at Toronto this 2nd day of August, 1983.

"Dennis Long  
by his Solicitor  
M. Gordon"

\* If probate was not applied for, the original will or a  
notarial copy thereof must form part of the application  
together with a death certificate.

AFFIDAVIT

I, Dennis Long, of the City of Toronto, Municipality of Metropolitan Toronto make oath and say:

1. That I am the beneficiary under the last will and testament of Philip Long to whom the property in Parcel 25-1, Section M-50 was devised.
2. That the said Philip Long died on the 6th day of January, 1980.
- \*3. That letters probate of the last will and testament of Philip Long were granted by the Surrogate Court of the County of Simcoe on the 21st day of July, 1980, to Francis O'Malley, as executrix.
4. That the said property has been vested in me under the provisions of The Devolution of Estates Act.
5. That the creditors of the deceased Philip Long have been notified and all debts of the said Philip Long have been paid. (Title will be marked "Subject to Debts" if this statement is not included).

SWORN before me )  
in the City of Toronto )  
in the Municipality of ) "D. LONG"  
Metropolitan Toronto this )  
2nd day of August, 1893. )

"J. O. TOBIN"  
A Commissioner, etc.

\* If the letters probate were not applied for, substitute the following in lieu of paragraph 3:

3. That, to the best of my knowledge and belief, the will (or the notarial copy of the will) attached to the application is the last will and testament of Philip Long  
(See next page)

and that letters probate was not applied for.

- 3a. That the testator was of the age of majority at the time of execution of the will and to the best of my knowledge the will has not been revoked by the marriage of the testator or otherwise. (This particular statement may be qualified - e.g., the testator may have been a member of the armed forces at the time of the execution of the will and, therefore, did not have to be of "legal age" to execute a valid will.)

NOTE: The above statements 3 and 3a may be made regardless of the value of the land in question. If statements 3 and 3a are used, a bond or covenant to indemnify the Land Titles Assurance Fund will be required:

If the deceased was a male and died prior to March 31, 1978, a statement in the affidavit must be provided as to the marital status of the deceased at the time of his death. If he was married and his widow has been put to an election between dower and the benefits provided in the will, then the affidavit of the applicant must include a statement as to the election made, unless a separate election by the widow forms part of the application. Where the Land Registrar is unable to determine from the name of the deceased registered owner whether the deceased was male or female (e.g., Beverley, Lee, Robin, etc.), he should be satisfied by affidavit evidence of the applicant as to the sex of the deceased.

APPLICATION TO BE REGISTERED  
AS OWNER, AS ADMINISTRATOR

THE LAND TITLES ACT

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

I, Robert Jones,  
the administrator of the estate of  
Alexander Jones,  
apply to be registered as owner, as administrator  
of the land entered as Parcel 25-1  
in the Register for Section M-50.

The evidence in support of this Application consists of:

1. Notarial copy of letters of administration of Alexander Jones;
2. Consent of the Treasurer under The Succession Duty Act (*if applicable*);
3. Consent of the Minister of National Revenue under the Estate Tax Act (Canada) (*if applicable*);
4. The affidavit of the applicant;
5. The election of the widow of Alexander Jones, deceased (*if applicable*).

The address for service of Robert Jones is 68 Morris Street,  
Toronto, Ontario.

DATED at Toronto this 3rd day of August, 1980.

"R.JONES  
by his Solicitor  
GEORGE FRANKLIN"

AFFIDAVIT

I, Robert Jones, of the City of Toronto in the Municipality of Metropolitan Toronto make oath and say:

1. That I am the administrator of the estate of Alexander Jones who died February 12, 1979.
2. That the following are the names and ages of all the persons entitled to the estate of Alexander Jones.
  - a. Janet Jones - 44 years old
  - b. Robert Jones - 21 years old
  - c. Mary Jones - 16 years old.
3. That the creditors of the deceased Alexander Jones have been notified and all debts of the said Alexander Jones have been paid. (If this statement is not provided, the Land Registrar will require evidence re debts in any subsequent dealing by the administrator.)

SWORN before me )  
 at the City of Toronto )  
 in the Municipality of Metropolitan ) "R. JONES"  
 Toronto this 2nd day of August, 1980 )  
 "C.K. Dexter"  
 A Commissioner, etc.

NOTE: If the deceased was a male and died prior to March 31, 1978, add the following:

4. Alexander Jones was at the time of his death married (or a widower or unmarried, as the case may be);

and if the deceased was married, add the following:

- \*5. That Janet Jones, widow of the deceased, elected (or has not elected) to take her husband's undisposed of real property in lieu of dower.

\* (If the widow has elected, the election must form part of the application.) (If the widow has not elected at the time of the making of this application, the Land Registrar will require on any further transfer by the administrator affidavit evidence whether an election has been subsequently made.) (If the dower rights of the widow have ceased, unequivocal proof of this will be required in lieu of paragraph 5.)

APPLICATION TO BE REGISTERED  
AS OWNER

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THE LAND TITLES ACT

TO: THE LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF TORONTO & YORK SOUTH (NO. 66)

We, Arthur Jordan and Judy Williams,  
being entitled to the estate of Carl S. Jordan, deceased,  
apply to be registered as owners  
of the land entered as Parcel 25-1  
in the Register for Section M-50.

The evidence in support of this Application consists of:

1. The affidavit of the applicant, Arthur Jordan;
2. Consent of the Treasurer under The Succession Duty Act (*if applicable*);
3. The consent of the Minister of National Revenue under the Estate Tax Act (Canada) (*if applicable*);
4. Death Certificate of Carl S. Jordan; (*or Letters of Administration*).

The address for service of Arthur Jordan and Judy Williams is P.O. Box 580. Toronto, Ontario.

DATED at Toronto this 4th day of August, 1983.

"Arthur Jordan and Judy Williams  
by their Solicitor  
Simon Green"

AFFIDAVIT

I, Arthur Jordan of the City of Toronto in the Municipality of Metropolitan Toronto make oath and say:

1. That Carl S. Jordan died on the 29th day of February, 1980.
- \*2. That letters of administration for the estate of Carl S. Jordan were granted by the Surrogate Court for the County of Peterborough on the 30th day of April, 1980 to Mary Jordan as administratrix.
3. That the following are the names and ages of all the persons entitled to the estate of Carl S. Jordan:
  - (a) Arthur Jordan - 32 years old
  - (b) Judy Williams - 35 years old
4. That the land entered in the Register for Section M-50 as Parcel 25-1 has been vested in Judy Williams and myself under the provisions of The Devolution of Estates Act.
5. That the creditors of the deceased Carl S. Jordan have been notified and all debts of said Carl S. Jordan have been paid. (Title will be marked "Subject to Debts" if this statement is not included.)

SWORN before me )  
at the City of Toronto )  
in the Municipality of Metropolitan ) "A. JORDAN"  
Toronto this 4th day of August, 1983.)  
"J.P. WOOD"  
A Commissioner, etc.

\* If letters of administration were not applied for, substitute the following in lieu of paragraph 2:

2. That a diligent search for the last will and testament of Carl S. Jordan has been made and no such will has been found.
- 2a. That no application for letters of administration has been made.  
(see page 18-22)

The above statements 2 and 2a may be made regardless of the value of the land in question. If statements 2 and 2a are used a bond or covenant to indemnify The Land Titles Assurance Fund will be required.

NOTE: If the deceased was a male and died prior to March 31, 1978, add the following:

6. Carl S. Jordan was at the time of his death married (or a widower or unmarried, as the case may be);

and if the deceased was married add the following:

- \*7. That Mary Jordan, widow of the deceased, elected (or has not elected) to take her husband's undisposed of real property in lieu of dower.

*\*(If the widow has elected, the election must form part of the application.) (If the dower rights of the widow have ceased, unequivocal proof of this will be required in lieu of paragraph 7.)*









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